

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

Alodie Gooden, as Wrongful Death	)	
Representative of Tanya Gooden and	)	
Cameron Gooden,	)	
	)	Civil Action No.
Plaintiff,	)	15-CV-45-S
vs.	)	
	)	
Bridgestone Americas Tire	)	
Operations, LLC f/k/a	)	
Bridgestone/Firestone North American	)	
Tire, LLC; FedEx Ground Package	)	
System, Inc., and John Doe	)	
Corporations/Entities 1-3,	)	
	)	
Defendants.	)	
&	)	
	)	
Gina Cubillos, as Wrongful Death	)	
Representative of the Estate of	)	Civil Action No.
James Ednie,	)	15-CV-50-S
	)	
Plaintiff,	)	
vs.	)	
	)	
Bridgestone Americas Tire	)	
Operations, LLC f/k/a	)	
Bridgestone/Firestone North American	)	
Tire, LLC; FedEx Ground Package	)	
System, Inc., and John Doe	)	
Corporations/Entities 1-3,	)	
	)	
Defendants.	)	

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DEPOSITION OF DENNIS RITCHIE

Phoenix, Arizona  
March 9, 2016

BY: KIM BATA, RMR/CSR  
Certified Reporter 50233

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PAGE  
309LINE  
11

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## RECESSES TAKEN

(Recessed from 9:58 a.m. to 10:03 a.m.)  
(Recessed from 11:01 a.m. to 11:13 a.m.)  
(Recessed from 12:25 p.m. to 1:15 p.m.)

## 1 DEPOSITION OF DENNIS RITCHIE

2 was taken on March 9, 2016, commencing at  
3 9:00 a.m., at the law offices of Lewis,  
4 Brisbois, Bisgaard & Smith, 2929 North Central,  
5 Suite 1700, Phoenix, Arizona, before Kim Bata,  
6 Certified Court Reporter No. 50233 for the State  
7 of Arizona.

8  
9  
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10  
11  
12  
13  
14  
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25

1 DENNIS RITCHIE,  
2 a witness herein, having been first duly sworn  
3 to speak the truth and nothing but the truth,  
4 was examined and testified as follows:

5  
6 EXAMINATION

7  
8 BY MR. LIEBERMAN:

09:00:55AM

9 Q. Could you state your name for the  
10 record, please.

11 A. Dennis Ritchie.

09:01:03AM

12 Q. Mr Ritchie, good morning. We  
13 inadvertently met this morning. Once again, my  
14 name is Chad Lieberman. I'm an attorney for  
15 Bridgestone.

16 You understand you're under oath right  
17 now, sir?

18 A. I do.

09:01:08AM

19 Q. You understand that's the same oath  
20 you would take in court if you were testifying?

21 A. Yes, sir.

22 MR. LIEBERMAN: I'm going to mark as  
23 Exhibit 231 the Notice of Deposition.

09:01:33AM

24 (Deposition Exhibit No. 231 marked for  
25 identification.)

1 BY MR. LIEBERMAN:

2 Q. Mr Ritchie, have you seen this notice  
3 previously?

4 A. Yes, sir.

09:01:41AM

5 Q. Starting on the second page and going  
6 to the third page towards the bottom it asks you  
7 to bring certain files.

8 Did you comply with the requirements  
9 of this notice?

09:01:50AM

10 A. I have.

11 Q. Can I see what it is that you brought  
12 and the capacity that you brought it.

13 A. I brought my Notice of Deposition. I  
14 have my resumé or CV. I have a copy of my case  
09:02:06AM 15 file on a thumb drive. I have a couple  
16 printouts that I've made of the FMCSR, some  
17 regulations that we can maybe discuss later.

18 Q. Great.

09:02:23AM

19 A. I've got a daily log inspection review  
20 I've completed in paper. I don't think it's on  
21 my thumb drive. I think it's all paper.

22 The cases I've testified in during the  
23 last at least four years.

24 Q. Is that updated? That list looks  
09:02:40AM 25 longer than what I originally received.



1 A. It should be. I may have added one  
2 more. I don't know.

3 Q. Compare it just for a second here.  
4 Yeah, there's a few added.

09:03:05AM

5 Can we keep this one right here for  
6 me?

7 A. Sure.

8 MR. FITZGERALD: Can I have the thumb  
9 drive, please?

09:03:12AM

10 MR. LIEBERMAN: Yep.

11 THE WITNESS: I have brought my case  
12 file that I've completed in this case, and I  
13 have a CD that came from Mr. Kapp's office that  
14 is -- has files on it that I've also included on  
15 my thumb drive.

09:03:27AM

16 BY MR. LIEBERMAN:

17 Q. So the only thing that might not be on  
18 the thumb drive is your analysis of the driver  
19 logs; is that correct?

09:03:35AM

20 A. Correct.

21 Q. Okay.

22 A. As well as a couple of printouts that  
23 I had in my file that I've made previously of  
24 the FMCSRs. That may not be on there as well.

09:03:47AM

25 Q. Is this your original file or is this

1 a copy that can stay with the court reporter?

2 A. This is my original file.

3 Q. Okay. We may make some copies. We'll  
4 see.

09:04:02AM

5 MR. KAPP: I've got at least one extra  
6 copy of his report if you need it.

7 MR. LIEBERMAN: I have it too. Thanks  
8 though.

09:04:14AM

9 In fact, why don't we just mark the  
10 report as I received it as 232.

11 (Exhibit 232 marked for  
12 identification.)

13 BY MR. LIEBERMAN:

09:04:36AM

14 Q. Mr Ritchie, what I've marked as  
15 Exhibit 232 is your report as we received it in  
16 this case. Your report also includes your CV,  
17 your testimony list, and a number of exhibits  
18 that you reference in the report itself.

09:04:59AM

19 Can you just peruse it and make sure  
20 it's a true and correct copy?

21 A. Yes. Is all of that included in 232?

22 Q. That's correct, sir.

23 A. Kind of a bad copy, but I can read it.

09:05:31AM

24 Q. Is it? I'm sorry. I printed it  
25 directly off the court page.

1 A. I don't see my testimony list in here,  
2 I don't believe.

3 Q. It was included on page -- the page  
4 numbers are up top. It is included on page 25.

09:05:52AM

5 MR. FITZGERALD: Here's your thumb  
6 drive.

7 THE WITNESS: Thank you.

8 Okay. I'm with you.

9 BY MR. LIEBERMAN:

09:05:59AM

10 Q. So if I refer to a page number within  
11 your report, I'm looking at that page number  
12 that's stamped on top of the page from the  
13 Court. Okay?

14 A. Yes. It looks like it's complete.

09:06:12AM

15 Q. Well, let's, if we can, turn to page  
16 No. 21. This is the start of your CV as it was  
17 presented.

18 Has it been updated since you sent it  
19 to us back on December 1, 2015?

09:06:40AM

20 A. No. There have been no additions.

21 Q. Can you give me just a rundown of your  
22 education history.

23 A. Yes. I attended Weber State  
24 University in the early -- or late '70s,  
25 obtained a bachelor of science degree as well

09:06:56AM

1 as -- in business administration as well as a  
2 bachelor of science degree in police science.

3 I attended law school in Los Angeles,  
4 California, for a period of time in the early  
5 '80s.

09:07:17AM

6 I took a break from the police  
7 department for six months, then went back to the  
8 police department after I graduated from  
9 polygraph school in the same city down there in  
10 Los Angeles, went back to work for the PD.

09:07:30AM

11 Q. Well, if I can interrupt you there. I  
12 don't mean to.

13 Did you ever finish law school?

14 A. No.

09:07:38AM

15 Q. Did you ever take the bar exam?

16 A. I did not.

17 Q. Okay. So you were a police officer at  
18 the time you were going to Weber State?

19 A. I quit the police department to go to  
20 law school. Talked to the chief and he says, If  
21 you don't like it, come on back. And I didn't  
22 like it.

09:07:47AM

23 Q. I understand.

24 A. Most attorneys do.

09:07:58AM

25 Q. I'm sure you get that a lot.

1 Looks like you were a police officer  
2 in Utah until about 1984?

3 A. That's correct.

09:08:10AM

4 Q. You had field training -- you were a  
5 field training officer and an accident  
6 investigator.

7 Did you take any accident  
8 reconstruction courses?

09:08:17AM

9 A. Only the course that they provided in  
10 the Utah academy, basic reconstruction course.

11 Q. It was reconstruction or was it  
12 investigation?

09:08:33AM

13 A. Well, they called it an accident  
14 investigation reconstruction course back then,  
15 but it's more of an investigation course, but it  
16 did contain some basic elements of  
17 reconstruction.

18 Q. Which elements did it contain -- well,  
19 strike that. Let me ask this question.

09:08:43AM

20 In your opinion, if you have one,  
21 what's the difference between accident  
22 investigation and accident reconstruction?

23 A. I don't think I could tell you that.

09:08:54AM

24 Q. Okay. So what components of these  
25 courses -- and I realize this was a ways ago,

1 but what components of these courses would you  
2 equate to accident reconstruction?

3 A. We went through some of the basic  
4 essentials of speeding, speed analysis using  
09:09:11AM 5 templates, feet per second, those kind of  
6 things. Mostly to do with templates, activators  
7 and how to figure speed, crash.

8 Q. Do you remember what the calculations  
9 were?

09:09:21AM 10 A. No, I can't, no.

11 Q. Do you remember what evidence you  
12 would look for to make those calculations?

13 A. You would look at yaw marks, skid  
14 marks, various marks like that in a crash.

09:09:35AM 15 Q. Do you have any training with respect  
16 to identifying different types of tire marks on  
17 the road?

18 A. Different kind of?

19 Q. Tire marks.

09:09:44AM 20 A. Just generally. I'd have to -- but  
21 not very much.

22 Q. Do you consider yourself an expert in  
23 accident reconstruction?

24 A. I do not.

09:09:52AM 25 Q. Did you perform an accident

1 reconstruction in this case?

2 A. I did not.

3 Q. Did you take any courses while you  
4 were at the police office in Ogden City, Utah,  
09:10:05AM 5 or otherwise, on vehicle dynamics?

6 A. No, sir.

7 Q. Do you have an opinion as to the  
8 difference between accident reconstruction and  
9 vehicle dynamics?

09:10:14AM 10 A. I do not.

11 Q. Do you have an opinion as to what the  
12 definition of vehicle dynamics would be?

13 A. Only generally on how a vehicle works  
14 at maybe various speeds. That's about it.

09:10:27AM 15 Q. Do you consider yourself an expert in  
16 vehicle dynamics?

17 A. I do not.

18 Q. What about human factors; have you had  
19 any human factors training?

09:10:37AM 20 A. Not particularly, no.

21 Q. You hedged a little bit on that  
22 answer.

23 So what type of training do you think  
24 you have with respect to human factors?

09:10:49AM 25 A. I would say no formal training in

1 human factors.

2 Q. Informal training would be what?

3 A. Generally what would cause a person to  
4 react to certain circumstances, for example,  
09:11:09AM 5 possibly fatigue and those kinds of issues.

6 Q. Trucking related?

7 A. Yes. It would only be trucking  
8 related.

9 Q. Have you taken any courses in these  
09:11:18AM 10 types of issues?

11 A. Issues with regard to human factors?

12 Q. Yes, sir.

13 A. I have not.

14 Q. Do you consider yourself an expert in  
09:11:27AM 15 human factors.

16 A. I do not.

17 Q. You were the president and owner of  
18 Western States Polygraph for about seven years,  
19 from 1980 to 1987?

09:11:46AM 20 A. Correct.

21 Q. What was the nature of that business?

22 A. I conducted polygraph examinations,  
23 both specific exams and also preemployment exams  
24 for various companies. Part-time job when I was  
09:11:59AM 25 on the police department.



1 And after I was employed by Swift  
2 Transportation, I conducted preemployment  
3 polygraph exams until the Polygraph Protection  
4 Act was passed.

09:12:12AM

5 Q. I was gonna ask you about that.

6 So for a period of time, at least  
7 until '87, were you giving polygraph exams to  
8 potential drivers for Swift?

09:12:23AM

9 A. I was. That's one reason they hired  
10 me.

11 Q. What type of topics did you talk  
12 about?

09:12:30AM

13 A. Well, generally -- and, again, these  
14 would be preemployment polygraph exams. They'd  
15 have drivers complete their application. I  
16 would interview the driver -- and keep in mind  
17 Swift was very small at that time -- and then  
18 inform them I would conduct a polygraph  
19 examination on information they told me, make  
20 sure it's all accurate on your application, and  
21 then I would conduct a preemployment exam.

09:12:43AM

22 Q. Such as their experience in driving  
23 tractor-trailers?

09:12:55AM

24 A. Generally any major topic on the  
25 application, their experience, whether or not

1 they've had any more -- or any accidents period,  
2 citations, convictions.

3 Q. Drug use?

09:13:10AM

4 A. Drug use. Number of years they've  
5 spent driving. Just -- I would generally go  
6 through the application and formulate questions  
7 based on that.

09:13:21AM

8 MR. KLINE: Hey, Chad, this is Steve.  
9 I'm having a little trouble hearing both of you  
10 at times and especially Mr. Ritchie. I just  
11 wonder if I could ask you to speak up a little.

12 MR. LIEBERMAN: Sure. We'll try to  
13 lean into the phone here, Steve.

14 MR. KLINE: Okay. Sorry about that.

09:13:33AM

15 MR. LIEBERMAN: No. That's all right.  
16 Let us know if you have any more problems.

17 BY MR. LIEBERMAN:

09:13:41AM

18 Q. Then the act was passed that said you  
19 can't take -- or you can't mandate polygraph  
20 tests for employees, right?

21 A. Correct. You could only do specific  
22 exams on certain individuals involved in law  
23 enforcement. They said they didn't work, but it  
24 does work, only on certain people.

09:13:52AM

25 Q. As I look at your resumé, it looks

1 like you overlap a little bit between your  
2 ownership and operation of Western States  
3 Polygraph and your employment with Swift  
4 Transportation; is that true?

09:14:05AM

5 A. It would not be true. When I was  
6 working for Swift, I was also a licensed  
7 polygraph examiner in the state of Arizona. So  
8 I would only be doing polygraph exams on Swift  
9 drivers and not overlapping Western States.

09:14:25AM

10 Q. Understood.

11 So you started at Swift Transportation  
12 in 1984?

13 A. Correct.

09:14:31AM

14 Q. Then you were the director of  
15 personnel from day one?

16 A. Correct.

17 Q. What was Swift Transportation's  
18 business?

09:14:41AM

19 A. Truck transportation, heavy-duty  
20 trucks, commercial trucks.

21 Q. Tractor-trailers?

22 A. Tractor-trailers.

23 Q. Did they pull doubles as well?

24 A. They did pull doubles, yes.

09:14:47AM

25 Q. Similar to the truck we're here to

1 talk about eventually?

2 A. Correct.

3 Q. How many tractors did they have?

4 A. Did they have?

09:14:53AM

5 Q. Yeah.

6 A. In what year?

7 Q. Good question.

8 When you first started in 1984, if you  
9 can recall. I'm not looking for a specific  
10 number, just a general idea of what they were  
11 doing.

09:15:02AM

12 A. We had about 150 trucks, mostly  
13 owner-operators at the time.

14 Q. When you say "owner-operators," Swift  
15 was the owner-operator?

09:15:11AM

16 A. No. We had contract carriers working  
17 for Swift Transportation, company trucks --  
18 company-owned trucks versus contractor trucks.

19 Q. Did Swift own the trailers?

09:15:26AM

20 A. Swift owned the trailers. That's  
21 typically what happens in the industry.

22 Q. So very similar to the setup we're  
23 going to talk about today with FedEx and CLR,  
24 correct?

09:15:34AM

25 A. Correct.

1 Q. What did Swift do -- strike that.

2 What was your job as director of  
3 personnel? Can you describe your job duties?

4 A. I recruited and screened particular  
09:15:51AM 5 driver applicants to become drivers, not only  
6 the contractors but as well as company drivers.

7 Q. Were the contractor drivers considered  
8 employees of Swift?

9 A. No, sir. They were contractors, not  
09:16:03AM 10 employees of Swift.

11 Q. Under the regulations -- the Federal  
12 Motor Carrier Regulations, would they be  
13 considered employees of Swift?

14 A. Under the Federal Motor Carrier  
09:16:11AM 15 Regulations, they were labeled and considered  
16 employees based on their definition.

17 Q. Understood.

18 Your vetting process. Can you  
19 describe what that was like in 1984 for Swift?

09:16:22AM 20 A. For all drivers?

21 Q. No. Let's limit it to, first, for the  
22 contract drivers.

23 A. '84. They had to meet the basic  
24 qualifications of the Federal Motor Carrier  
09:16:38AM 25 Regulations that are in the regulations. There

1 are about eight different topics that -- that  
2 would be the minimum standards they would have  
3 to have.

4 And then we have -- also had other  
09:16:48AM 5 standards with regard to so many miles,  
6 experience, no accidents, no more than an  
7 accident maybe -- or a citation per year, no  
8 more than one accident in the last three years.  
9 Certain criteria like that.

09:17:04AM 10 Q. In general, did you give driving tests  
11 to these applicants?

12 A. I did not give driving tests. We had  
13 a person that was an experienced -- usually a  
14 local person doing evaluation.

09:17:21AM 15 Q. On behalf of Swift?

16 A. On behalf of Swift, yes, for both  
17 company as well as contractor drivers.

18 Q. And I misspoke. When I said "you," I  
19 meant Swift.

09:17:32AM 20 So Swift contracted with another party  
21 to perform driver tests -- driving tests for  
22 these applicants; is that true?

23 A. That's true, and also contractors. It  
24 depended on who was there at the time. It could  
09:17:45AM 25 be another contractor. It could be an employee

1 driver that would be performing tests on new  
2 applicants ready to go into orientation, for  
3 example.

4 Q. Were there forms generated of these  
09:17:58AM 5 tests?

6 A. There was a form, yes.

7 Q. Was it on Swift paper?

8 A. It was on Swift paper, yes.

9 Q. So this was a Swift test administered  
09:18:07AM 10 for these contract drivers?

11 A. Correct.

12 Q. Besides the driving test, what else  
13 was administered to these drivers?

14 A. We would send them to obtain a  
09:18:19AM 15 Department of Transportation physical, if they  
16 didn't have one already. If contractors had an  
17 examination, we would accept that until it  
18 expired or we would send them down for a new  
19 physical if it was about to expire.

09:18:32AM 20 We would also have them take a DOT  
21 drug and alcohol test required by the  
22 preemployment under the regulations.

23 Q. Do you remember how long the driving  
24 test was, how long it would take on average?

09:18:45AM 25 A. It would depend. Until the examiner

1 was satisfied that the driver knew what he or  
2 she was doing.

3 Q. In your experience, what was the  
4 shortest amount of time that you can recall an  
09:18:57AM 5 examiner being satisfied?

6 A. It could be a run around the yard,  
7 hooking up a set of doubles, hooking up  
8 converter gear, and doing an inspection.

9 Q. So an hour?

09:19:12AM 10 A. It depends. I wouldn't -- I couldn't  
11 tell you in every circumstance on how long it  
12 would be. Sometimes the drivers would get  
13 together, the driver to be inspected and the  
14 driver giving the test talked for a while. They  
09:19:27AM 15 would go out and do inspections and go through  
16 the equipment and make sure he knew how to shift  
17 gears.

18 But the examiner would also know the  
19 experience level of driver after talking to him,  
09:19:45AM 20 how many years he'd been driving, miles, those  
21 kinds of things.

22 Q. You then transitioned into director of  
23 safety for Swift Transportation in 1985, held  
24 that position for about five years to 1990; is  
09:20:02AM 25 that correct?



1 A. That's correct.

2 Q. Can you describe your duties and  
3 responsibilities as director of safety?

09:20:12AM

4 A. Yes. My responsibilities were to not  
5 only oversee the driver recruiting function but  
6 also the driver compliance functions with regard  
7 to the regulations and also to adapt company  
8 policies and procedures for accident prevention,  
9 injury prevention, and claims prevention. Three  
10 different kinds of losses.

09:20:32AM

11 Q. Your oversight included both contract  
12 and noncontract drivers, correct?

13 A. Correct.

09:20:42AM

14 Q. And most of my questions are going to  
15 be focused on the contract drivers, clearly, in  
16 this case. You understand that, right?

17 A. I do.

18 Q. So if I just say "drivers," I'm  
19 referring to contract drivers. Is that fair?

09:20:49AM

20 MR. KAPP: Even -- Chad, even in the  
21 context of talking about his experience with  
22 Swift and its drivers?

23 MR. LIEBERMAN: I'll do my best to  
24 segregate the question, when needed.

09:21:01AM

25 But if you're confused on which

1 drivers I'm talking about, just please tell me  
2 and I'll clarify. Is that all right.

3 THE WITNESS: Or shall I assume it's  
4 always contract drivers unless you say  
09:21:10AM 5 otherwise?

6 MR. LIEBERMAN: I would prefer that if  
7 it's okay with your counsel as well.

8 MR. KAPP: Okay. So if you ever say  
9 "driver," he's supposed to be thinking contract  
09:21:19AM 10 driver?

11 MR. LIEBERMAN: In the context of  
12 going through his background at Swift right now.

13 MR. KAPP: Okay. All right.

14 THE WITNESS: Okay.

09:21:26AM 15 MR. KAPP: Off the record.

16 (An off-the-record discussion ensued.)

17 BY MR. LIEBERMAN:

18 Q. So with respect to compliance under  
19 the regulations as your duty as director of  
09:21:54AM 20 safety, what is it that you and Swift did to  
21 ensure that these contract drivers were  
22 complying with the federal regs?

23 A. Well, generally it starts off by the  
24 contractor wanting to first come on board with  
09:22:10AM 25 Swift and lease his truck on with Swift. The

09:22:29AM

1 contract drivers would go through generally the  
2 same responsibilities as an employee driver  
3 would as far as the screening. They would fill  
4 out a contractor application whereas an employee  
5 would fill out an employment application. Two  
6 different applications, generally the same  
7 information to keep those things separated.

09:22:42AM

8 So an application, it would be -- with  
9 compliance, it would involve background checks  
10 on the driver, history checks, drug screening,  
11 if needed; physical, if needed; things we've  
12 just talked about, and getting them in  
13 compliance with the employment driver  
14 qualification file and maintenance of that file.

09:23:02AM

15 That's the compliance side of things, which  
16 would also include the road test.

09:23:16AM

17 If the driver's not going to be  
18 pulling doubles, which is another issue, all we  
19 may do is look at their history and accept their  
20 commercial driver's license.

09:23:32AM

21 Q. That all seems to me to be part of the  
22 application process. What I think I'm trying to  
23 focus this more on is what I would understand as  
24 compliance with the regulations to be, but let  
25 me ask it this way.

1 Was there any monitoring of these  
2 contract drivers after they were employed?

3 MR. KAPP: Object to the form to the  
4 extent --

09:23:42AM

5 BY MR. LIEBERMAN:

6 Q. After they were hired?

7 MR. KAPP: Object to the form.

8 Go ahead.

9 THE WITNESS: After they were leased

09:23:45AM

10 on?

11 BY MR. LIEBERMAN:

12 Q. That's a better phrase. Thank you.

13 So after these drivers were leased on,  
14 did your duties as director of safety entail any  
15 oversight of these drivers?

09:23:52AM

16 A. Yes. Oversight under two different  
17 scenarios. First of all, the driver to monitor  
18 any -- let me back up just a little bit.

19 Q. Sure.

09:24:04AM

20 A. When the Federal Motor Carrier Safety  
21 Administration determines they want to deal with  
22 companies, motor carriers, drivers -- that's  
23 that whole employer/employee relationship  
24 thing -- they only want to deal with two  
25 entities.

09:24:14AM

1           They classify them as employer and  
2 employee so they don't have to dig -- drill down  
3 through all these contractors.

4           And so if, for example, roadside  
09:24:25AM 5 inspection. A contractor stopped at a roadside  
6 inspection and had problems there, a report's  
7 completed. That would come to Swift  
8 Transportation, which is the primary carrier.

9           We would then take those reports and  
09:24:37AM 10 go down to the contractor, whether it's an  
11 owner-operator or whether it's an owner-operator  
12 fleet, contractor fleet, 10, 15, 20 trucks, and  
13 deal with it there.

14           So when you're talking about  
09:24:48AM 15 monitoring, we would monitor, for example, when  
16 their physical would be due. We would tell them  
17 they have to go get a new physical before you  
18 continue driving. If they had citations,  
19 roadside inspections.

09:25:03AM 20           Back then -- and, actually, most of my  
21 time with Swift, we'd have to deal with the bid  
22 inspection in California where they would obtain  
23 their motor vehicle records.

24           Well, we would take all that  
09:25:14AM 25 information that was sent to Swift as the motor

1 carrier. We would monitor the driver to make  
2 sure he's not in excess of any problems with  
3 Swift's general guidelines and rules as far as  
4 driver's concerned.

09:25:26AM

5 The next step is equipment. Typically  
6 the owner-operator leases on the tractor.  
7 Tractor's his tractor, his responsibility's from  
8 top to bottom, taxes, fuel and all that. And  
9 they would pull our trailers with our cargo in

09:25:41AM

10 it, similar to FedEx.

11 So we would also have what we call a  
12 truck file that we keep their monthly reports in  
13 or we would have them complete monthly reports  
14 and they would send us invoices of repairs so we  
15 know they are doing maintenance on their truck  
16 that is leased to Swift Transportation. So that  
17 is the monitoring process that, I guess, you  
18 might be talking about.

09:25:56AM

19 Q. Under the regulations, it's ultimately  
20 Swift's responsibility to ensure the safe travel  
21 of these vehicles, correct?

09:26:11AM

22 MR. KAPP: Object to the form.

23 THE WITNESS: Well, we provide the  
24 trailers and we provide the cargo, but Swift as  
25 the primary carrier to have that truck go from

09:26:22AM

1 Point A to Point B.

2 BY MR. LIEBERMAN:

3 Q. So it's in Swift's interest to make  
4 sure it goes safely from Point A to Point B;  
09:26:30AM 5 isn't that correct?

6 A. It's one of the jobs, yes.

7 Q. Which is why Swift instituted policies  
8 and procedures to monitor not only the drivers  
9 but also the maintenance of the tractors, right?

09:26:39AM 10 A. One of the purposes, yes.

11 Q. What type of policies were in place  
12 with respect to Swift's oversight of tractor  
13 maintenance?

14 A. Pretty much what I just told you. We  
09:26:54AM 15 would have the contractors submit or provide us  
16 with monthly information on the repairs that  
17 they would have done. That information would go  
18 in their truck file.

19 And with Swift Transportation, we  
09:27:07AM 20 would have what we call a driver manager that  
21 would have the truck file. They would make sure  
22 that those repairs or that information was being  
23 submitted, number one, and, number two, placed  
24 in the file so that there was some kind of  
09:27:23AM 25 ongoing maintenance program required under the

1 regulations that the owner-operator or the  
2 contractor is responsible to complete on their  
3 truck that's leased to Swift.

09:27:38AM

4 Q. The monthly maintenance reports that  
5 Swift received, was there any auditing process  
6 or checking process to ensure the accuracy of  
7 those reports?

09:27:54AM

8 A. No. Only generally that the reports  
9 were being submitted along with the receipts.  
10 In other words, if a month went by or maybe,  
11 let's say, even two months and the truck manager  
12 says, Wait, Charlie hasn't submitted any  
13 receipts. I need to talk to him about that. Is  
14 he doing any repairs.

09:28:09AM

15 Because there may not be any repairs  
16 in that truck file for a month or two. Truck  
17 could go for a couple months until the next B  
18 service until he has enough miles on the truck.

09:28:22AM

19 But he would find out, you know, Charlie, are  
20 you submitting your receipts? Have you had your  
21 truck in for repairs? Get us the receipts in  
22 and fill out any information you need on this  
23 monthly truck report to make sure that you  
24 are -- Swift feels good that you have some kind  
25 of monitoring system of your truck.

09:28:35AM



1 Q. Was the driver manager a Swift  
2 employee?

3 A. Driver manager would be a Swift  
4 employee generally.

09:28:43AM

5 Q. So the driver manager, a Swift  
6 employee, was the one that was reviewing and  
7 monitoring the maintenance reports that were  
8 being submitted monthly by the contractors; is  
9 that true?

09:28:53AM

10 MR. KAPP: Object to the form as  
11 worded.

12 Go ahead.

13 THE WITNESS: Generally, yes.

14 BY MR. LIEBERMAN:

09:28:59AM

15 Q. Who did the driver manager report to  
16 within Swift?

17 A. Well, the driver manager would report  
18 to, like, a terminal manager. Depends on the  
19 size of the terminal. It could be a fleet  
20 manager who would then report to the terminal  
21 manager, but generally the driver manager would  
22 report to the terminal manager at that location.

09:29:14AM

23 Q. At some point did that road lead to  
24 your office as director of personnel -- or  
25 director of safety, excuse me?

09:29:26AM

1 A. Only if there were issues with regard  
2 to the drivers and citations or something like  
3 that to be reviewed.

09:29:38AM

4 Q. So there was a hierarchy of reporting  
5 is what I'm hearing; is that true?

09:29:54AM

6 A. True. You've got two general sides of  
7 the transportation puzzle. You've got safety  
8 and you've got the operations side and depending  
9 on what the issue or what the need was, it would  
10 either go to one of those two entities for  
11 determinations.

12 Q. During your tenure as director of  
13 safety, did you ever get any -- encounter any  
14 issues with driver safety?

09:30:09AM

15 A. Are you kidding? Certainly.

16 Q. Can you describe?

17 A. That was my job.

09:30:22AM

18 Q. So director of driver safety for Swift  
19 Transportation, you were overseeing the safety  
20 of the drivers underneath you?

21 MR. KAPP: Object to the form.

09:30:36AM

22 THE WITNESS: I was overseeing the  
23 company's safety program, which included  
24 elements of drivers who were in error or  
25 committing violations or something like that.

1 BY MR. LIEBERMAN:

2 Q. As part of this program, did you  
3 provide safety training to these contract  
4 drivers?

09:30:42AM

5 A. Not really, no. Contractors had to be  
6 experienced drivers, unlike the new employee  
7 drivers that were actual employees. They  
8 required more training -- CDL training is what  
9 I'm talking about -- for them to get a CDL. And  
10 then they would have to go out with a driver  
11 trainer.

09:30:59AM

12 The contractors had to already be  
13 employed -- not employed, but experienced with  
14 so many miles, so much tenure, so many miles  
15 without collisions or accidents for them to even  
16 be leased on with the company.

09:31:11AM

17 Q. Once they were leased on, was there a  
18 program or a policy that was provided them  
19 regarding safety?

09:31:22AM

20 A. No specific policy. We would provide  
21 contractors with any assistance they needed.  
22 Similar to FedEx, we would have -- most of these  
23 trucking companies have driver rooms with  
24 posters. They have information that's provided  
25 to the contract drivers. If drivers needed --

09:31:39AM

1 whether it's a logbook or some issue or some  
2 questions, he would talk to the dispatcher.

3 But primarily now, and during the last  
4 five, ten years, we would tell them to contact  
09:31:56AM 5 the FMCSA website that has updated safety  
6 information about regulations, what's going on.  
7 And I know that -- through depositions, that  
8 FedEx has a website that they can be -- go to to  
9 look up FedEx safety information.

09:32:14AM 10 Q. After the contract driver was leased  
11 on -- is that the correct term to use?

12 A. Correct, leased on -- they would lease  
13 their tractor on and they would have to be  
14 qualified by Swift.

09:32:26AM 15 Q. After that, did Swift do anything to  
16 provide these drivers with any safety  
17 information?

18 MR. KAPP: Object to the form. Asked  
19 and answered.

09:32:35AM 20 THE WITNESS: If they asked for  
21 information, we would. There may have been --  
22 over the years we may have given them a safety  
23 book or guideline, some of our safety guidelines  
24 in a contractor book that we would give to --  
09:32:53AM 25 generally the way it works, instead of giving

1 all of the drivers of a fleet, a contract to  
2 fleet information, we would provide that to the  
3 fleet manager, if you will, the fleet owner. If  
4 it was an owner-operator, we would give him the  
5 contractor manual.

09:33:08AM

6 If it was a fleet owner, we would give  
7 the fleet owner three manuals for his drivers,  
8 tell them to read through that, understand our  
9 policies.

09:33:18AM

10 So you not only have Swift general  
11 policies about you can't have so many accidents  
12 or citations in a particular period of time.  
13 The key for an experienced driver, particularly  
14 an accident-free driver, would be to have him  
15 update himself on the FMCSRs, and that primarily  
16 is done through websites.

09:33:32AM

17 BY MR. LIEBERMAN:

18 Q. The manuals that you mentioned just  
19 now, the -- what were they? You mentioned a few  
20 manuals. Is there a fleet manual or --

09:33:44AM

21 A. Well, it would be a contract- -- I'm  
22 talking Swift Transportation.

23 Q. Yes.

24 A. It would be a contractor safety  
25 manual. For example, you know, how many

09:33:52AM

1 citations they can have or can't have if they  
2 want to keep the trucks leased on with Swift.  
3 The monthly maintenance processes and those  
4 kinds of things. That manual didn't go to the  
5 employees.

09:34:09AM

6 Q. It went to the contractors?

7 A. Went to the contractors.

8 Q. And this was a manual generated by  
9 Swift, correct?

09:34:16AM

10 A. It was, yes.

11 Q. And the manual covered such things as  
12 Swift's policies on routine maintenance; is that  
13 true?

14 A. No. Not routine maintenance for their  
15 trucks specifically. They own their truck.  
16 They're responsible for maintenance on their  
17 truck, but it would inform them on submitting  
18 their receipts and information to Swift.

09:34:27AM

19 Q. Okay.

20 A. So we understood they had an ongoing  
21 maintenance program that was required by the  
22 FMCSRs.

09:34:38AM

23 Q. The FMCSRs require a maintenance  
24 program, correct?

09:34:52AM

25 A. Correct.

1 Q. Do you remember what section it is?

2 A. 3 --

3 Q. I know I'm testing your memory.

4 Sorry.

09:34:59AM

5 A. It would be under three ninety --

6 Section 393. I could look it up if you want.

7 Q. Did Swift ensure that its contractors  
8 had a maintenance program before leasing those  
9 contractors?

09:35:16AM

10 A. No. We didn't know what was happening  
11 with the truck, nor did we really care what  
12 happened to that truck before, because when the  
13 truck was leased on to Swift, we would do an  
14 initial inspection. That's where the start  
15 occurred of the lease.

09:35:31AM

16 Q. Right.

17 A. And once that tractor was properly,  
18 let's say, inspected, maintained, then the  
19 maintenance from that time on would continue.

09:35:43AM

20 And, of course, there are some issues  
21 where we wouldn't let them lease on a truck more  
22 than five years old or something like that. We  
23 had -- we wanted to lease on newer trucks so we  
24 didn't have to deal with a lot of breakdowns.

09:35:54AM

25 Q. Did Swift require its contractors to

1 have a maintenance program?

2 A. We required them to comply with the  
3 regulations. We just needed to monitor their  
4 maintenance program or cause to be monitored.  
09:36:07AM 5 That's how the regulations read.

6 And that's where they submit their  
7 receipts. But they're responsible for their --  
8 as a motor carrier, actually, to maintain a  
9 maintenance program on their truck.

09:36:17AM 10 Q. In your experience, did these  
11 contractors have written maintenance programs?

12 A. Written by who?

13 Q. I don't know. That's what I'm asking.

14 A. I don't think so. They're there to  
09:36:33AM 15 comply with the regulations.

16 Q. Well, the regulations don't tell you  
17 when you have to bring your truck in to get  
18 maintained, correct?

19 A. Well, yes. If you're talking about  
09:36:42AM 20 B services and particularly owners, for example,  
21 they own the truck. They know when to have a  
22 B service, you know, based on so many miles.  
23 And they're responsible to take the truck in for  
24 their oil changes and inspections, tires, those  
09:36:55AM 25 kinds of things.



1 Q. Did Swift monitor whether or not the  
2 contractors were performing B service on their  
3 tractors?

4 A. Only what they submitted on a monthly  
09:37:03AM 5 basis to let us know that they were having  
6 B services and other work done. It wasn't  
7 specifically B services. We would expect shop  
8 information to come in every couple months  
9 obviously when a B service is ready, because we  
09:37:18AM 10 know that they knew they had to get the oil  
11 changed.

12 Q. And if Swift didn't see it, what would  
13 Swift do?

14 A. We would talk to the owner-operator  
09:37:26AM 15 and say, first of all, are you submitting your  
16 receipts? And generally he says, No, I forgot  
17 and he would go out in the truck and get them or  
18 something like that.

19 But it would kind of be between the  
09:37:37AM 20 supervisor and the driver. I mean, if he wasn't  
21 taking care of his truck and the truck was  
22 broken down -- for example, if the driver says,  
23 My truck's out of service because of breakdowns  
24 time and time again, then the manager would look  
09:37:52AM 25 at his file and say, Well, Charlie, where's your

1 information? You know, are you inspecting your  
2 truck? Are you getting it in for servicing?

3 And eventually if his truck is down,  
4 we could just pull the lease. He's got to go  
5 somewhere else.

09:38:07AM

6 Q. Did Swift ever do that?

7 A. Oh, yeah.

8 Q. So Swift was monitoring these  
9 maintenance records pretty closely?

09:38:16AM

10 A. Well, I don't know pretty close, but  
11 we were getting information from the driver  
12 himself. And, again, it could be the driver.  
13 If it's an owner-operator, if he's taken out of  
14 service, then we pull the lease as well if he  
15 can't drive. So there's two issues there.

09:38:29AM

16 Q. Swift's oversight was more than just  
17 collecting the maintenance records and putting  
18 it in a file, correct?

19 A. Well, yes, it would be. If the driver  
20 was not submitting receipts for a period of a  
21 couple months, we would check with the driver to  
22 say where are your receipts. If he wasn't  
23 maintaining his vehicle, the general motor  
24 carrier has the -- under the regulations to be  
25 able to cause that that truck leased is being

09:38:44AM

09:39:00AM

1 maintained.

2 And if that threshold or if that  
3 situation doesn't happen, then we've got to  
4 terminate the lease because we have to know that  
5 he's doing work on his truck.

09:39:15AM

6 Q. Do you recall a scenario in which a  
7 driver manager for Swift received a maintenance  
8 record in which a maintenance item was suggested  
9 but declined by the tractor owner?

09:39:31AM

10 MR. KAPP: Object to the form. Overly  
11 broad.

12 THE WITNESS: I'm sure that's probably  
13 happened. I wouldn't know of a situation. I  
14 know in this particular situation there's an  
15 issue there, but it wasn't placed out of  
16 service. It could run based on the technicians.  
17 BY MR. LIEBERMAN:

09:39:43AM

18 Q. We're talking about the Redbone Diesel  
19 invoice from November 5, 2014, in this case,  
20 correct?

09:39:56AM

21 A. Correct.

22 Q. We can talk about that in this context  
23 then.

24 That's an invoice in which a right  
25 rear ABS valve was founding leaking.

09:40:04AM

1 Is that your recollection?

2 A. The ABS valve, correct.

3 Q. And it was not repaired?

09:40:12AM

4 A. It was not repaired, nor was it placed  
5 out of service.

6 Q. Is that something that the Swift  
7 driver managers would have been monitoring?

09:40:24AM

8 A. Not really. If that came in, if they  
9 read that report, they would ask the driver,  
10 what's the deal with your ABS right monitor.  
11 But in this particular situation, I read it  
12 wasn't placed out of service.

09:40:36AM

13 In other words, if it was slightly  
14 leaking, it could have been done at a different  
15 time based on how I read the report.

16 Q. Just to make the record clear, when  
17 you say this situation, you're talking about  
18 this case, right?

19 A. This case, correct.

09:40:42AM

20 Q. Thank you.

21 MR. KAPP: The ABS, Redbone.

22 THE WITNESS: This case, Redbone ABS.  
23 BY MR. LIEBERMAN:

09:40:50AM

24 Q. Now, are you aware in this case that  
25 both drivers, Mr. Kehler and Mr. Marks, had no

1 knowledge of that Redbone Diesel maintenance  
2 record --

3 A. I am.

4 Q. -- when asked?

09:40:57AM

5 A. I am.

6 Q. So in your scenario in which the Swift  
7 driver manager would have approached Mr. Kehler  
8 and said, Can you please explain this particular  
9 issue, being the leaking ABS valve, and he would  
10 have received a response that said, I know  
11 nothing about it, what would the Swift driver  
12 manager have done?

09:41:13AM

13 MR. KAPP: Object to the form.

14 THE WITNESS: I think a Swift manager  
15 would have read the report like I did. And in  
16 that particular scenario, you had CLR utilizing  
17 two or three different providers -- service  
18 providers or technicians that are qualified  
19 under the FMCSRs. They have to be qualified to  
20 be truck inspectors.

09:41:20AM

09:41:40AM

21 And I think there was communications  
22 between the technician and Mr. Rodwick, I  
23 believe, about that. And the Driver Kehler also  
24 indicated that the technician asked can he pick  
25 the truck up, work on it and take it back to

09:41:57AM

1 FedEx.

2 Well, those two drivers were off duty.  
3 Then they would generally leave a note on the  
4 seat if it needed to be repaired. There was no  
5 note.

09:42:10AM

6 BY MR. LIEBERMAN:

7 Q. That information you just recited, is  
8 that your understanding of the deposition  
9 testimony of Mr. Rodwick and Mr. Kehler?

09:42:23AM

10 A. That's correct.

11 MR. FITZGERALD: Please mark this part  
12 of the deposition.

13 THE WITNESS: That's how I understood  
14 the transaction took place.

09:42:44AM

15 BY MR. LIEBERMAN:

16 Q. Did Swift have a procedure in which  
17 the driver manager would have to report issues  
18 of maintenance or lack of maintenance to a  
19 higher level in the hierarchy?

09:43:00AM

20 A. Well, of course it depends on how --  
21 some minor changes over the years. You have to  
22 remember, when I was with Swift I started off  
23 with 150 trucks and then we went to 20,000  
24 trucks. So things do change --

09:43:13AM

25 Q. Sure.

1 A. -- over time as far as procedures.

2 But, generally, the driver manager would get  
3 with the contractor driver and find out if he's  
4 having his truck inspected or repaired. And if  
09:43:28AM 5 the driver says no, they have a discussion why  
6 not or generally what happened is he wasn't  
7 submitting his receipts.

8 Then he could say, Charlie, if you're  
9 not maintaining your truck, I'm gonna have to  
09:43:41AM 10 pull your lease. You need to make sure -- so  
11 there's various stages of how this maintenance  
12 thing goes.

13 Q. Sure. And I guess in my hypothetical  
14 what I'd ask is you have a situation in which  
09:43:54AM 15 the maintenance record shows an unrepaired item.  
16 Your driver manager goes up to Charlie, the  
17 driver, and says, Charlie, what is this? And  
18 Charlie says I don't know.

19 What is your driver manager supposed  
09:44:04AM 20 to do next?

21 MR. KAPP: Object to the form.

22 THE WITNESS: Well, as I said before,  
23 he needs to look at the form first and ask  
24 Charlie after looking at the form, says you  
09:44:15AM 25 probably need to get this fixed down the road.

1 If he did submit the report, which the report  
2 came in, read the report, and say you need to  
3 get this fixed the next time you have it in the  
4 shop, if it was not an out-of-service item.

09:44:28AM

5 And the technicians and the people at  
6 Redbone, Warner and these other places, they're  
7 the ones that are certified to know when it can  
8 be placed out of service, when it can't.

9 BY MR. LIEBERMAN:

09:44:37AM

10 Q. What you're saying with respect to the  
11 Redbone Diesel record that we're talking about,  
12 the November 5, 2014 record, you're saying  
13 because Redbone Diesel didn't list it as an  
14 out-of-service item, it is therefore not an  
15 out-of-service item?

09:44:50AM

16 A. They're the ones that can determine  
17 whether it's out of service. They should -- if  
18 that particular item -- if that particular item  
19 needed to be repaired before that truck was in  
20 service -- and they know the guidelines -- they  
21 should have left a note on the seat saying,  
22 Charlie, you've got to get this fixed or instead  
23 of leave a note, they would have called the  
24 owner, probably, Chris, and said, Hey, Chris,  
25 we've got to get this fixed. Chris would have

09:45:01AM

09:45:11AM



1 said get it fixed.

2 Q. Do you know if they called Chris?

3 A. I don't know if they specifically  
4 called Chris or not. I know there was no note  
09:45:22AM 5 on a seat like Mr. Kehler that generally happens  
6 if something needs to be repaired.

7 Q. Do you know if Redbone Diesel told --  
8 strike that.

9 Do you know if Redbone Diesel -- I  
09:45:36AM 10 believe you said the word "certified"?

11 A. In order for a -- I'll say it mechanic  
12 or technician, however you want to call him.

13 In order for them to do truck  
14 inspections, annual inspections, for example,  
09:45:50AM 15 they have to be certified -- trained and  
16 certified under the federal regulations. They  
17 have to have a certification to do those  
18 inspections, similar to a brake inspector.

19 A driver can't work on ABS brakes.

09:46:04AM 20 They're not trained and certified. You know,  
21 it's one of those deals. So they have to rely  
22 on the technician to say either this needs to be  
23 fixed or needs to be fixed one of these days or  
24 whatever. They're the experts in that.

09:46:15AM 25 Q. As the director of safety for Swift

1 Transportation, if you saw a record such as this  
2 Redbone Diesel record we're talking about with a  
3 leaking right rear ABS valve that went unfixed,  
4 would you allow that truck onto the road to pull  
5 Swift trailers?

09:46:28AM

6 MR. KAPP: Object to the form.

7 THE WITNESS: What I would do is I  
8 would read the form and find out what the person  
9 said, which I've read that, and talk to the  
10 owner-operator.

09:46:40AM

11 If I was involved personally and fleet  
12 manager was out of it, I would say you need to  
13 get this fixed. It appears it's not leaking bad  
14 enough to be able to shut you down. Get it  
15 fixed next time you get it in the shop.

09:47:00AM

16 I'd have to look at all the  
17 circumstances. And then you say, Hey, if you're  
18 off, take it back into Redbone and tell them to  
19 fix it.

09:47:11AM

20 BY MR. LIEBERMAN:

21 Q. So did Swift Transportation only care  
22 about maintenance with respect to out-of-service  
23 items?

24 A. No.

09:47:18AM

25 Q. I mean, the regulations require the

1 vehicles to be maintained in a condition which  
2 doesn't lead to a breakdown, correct?

3 A. Correct.

4 Q. So isn't this one of those conditions  
5 that could lead to a breakdown?

09:47:26AM

6 A. It may lead to a breakdown. The  
7 technician's the one who knows whether or not  
8 it's out of service or not.

9 Q. Would the driver manager for Swift  
10 contact a technician to talk about it?

09:47:36AM

11 A. The driver may --

12 MR. KAPP: Object to the form. Calls  
13 for speculation.

14 MR. LIEBERMAN: If he knows.

09:47:45AM

15 MR. KAPP: And foundation.

16 Go ahead.

17 THE WITNESS: In this particular case,  
18 a driver manager would get ahold of the owner  
19 contractor. If you were to switch over now to  
20 FedEx, he would have called Chris --

09:47:54AM

21 BY MR. LIEBERMAN:

22 Q. Rodwick?

23 A. Rodwick, yeah. Called Chris Rodwick  
24 and said, Hey, I got this form in from you,  
25 Kehler, whoever was submitting the forms, and I

09:48:02AM

1 see an ABS brake valve that is somewhat leaking.  
2 They didn't put it out of service -- I forget  
3 the exact wording on it -- are you aware of  
4 that.

09:48:15AM

5 Q. What if he says I don't know or says,  
6 no, I'm not aware of it?

7 MR. KAPP: Same objection.

8 THE WITNESS: Then he would have to  
9 talk to the driver, make sure you get this thing  
10 fixed.

09:48:24AM

11 BY MR. LIEBERMAN:

12 Q. Before the truck leaves the yard?

13 A. Depends on -- depends on the part and  
14 depends on this particular situation.

09:48:35AM

15 Q. Understand.

16 In summary, Swift's driver manager  
17 would have done something, correct?

18 MR. KAPP: Same objection.

19 BY MR. LIEBERMAN:

09:48:44AM

20 Q. They would have -- he or she would  
21 have investigated this issue and using the best  
22 judgment available would have proceeded forward?

23 A. I don't know if the manager would have  
24 investigated this issue. The manager, being an  
25 experienced truck driver himself, may have

09:48:57AM

1 looked at the report knowing that a certified  
2 brake technician said this part is leaking and  
3 he may have just talked to the driver to get it  
4 fixed.

09:49:10AM

5 I don't know if he would have  
6 conducted an investigation. He wouldn't have  
7 called Redbone. That's not his job. It's not  
8 his truck. It's Chris's truck.

09:49:20AM

9 Q. Sure. I understand you take issue  
10 with my term "investigation" but whatever.

11 The driver manager would have looked  
12 at the report, would have asked the driver and  
13 potentially even called the owner-operator --  
14 and in the case we're talking about,

09:49:31AM

15 Mr. Rodwick -- to get more information?

16 MR. KAPP: Same objection.

17 THE WITNESS: May have.

18 BY MR. LIEBERMAN:

09:49:39AM

19 Q. With respect to your director of  
20 safety position, was there any oversight over  
21 the hours of service of the drivers?

22 A. Absolutely, yes.

23 Q. What was the policy or procedure that  
24 Swift employed to oversee the hours of service?

09:49:52AM

25 A. Of the contractor drivers?

1 Q. Sure.

2 A. Well, I mean, it depends on at what  
3 point in time. Back when, as we had all these  
4 paper logs, and we would have the compliance  
09:50:05AM 5 people go through logs and conduct audits, not  
6 on every log, but on so many owner-operators.  
7 And we had a process on which ones we may want  
8 to have -- those that had previous violations.

9 In this particular case, we all know  
09:50:18AM 10 that they were on e-logs, within a period of  
11 time before the crash anyway, kind of back and  
12 forth. But that made it easy for FedEx to, on  
13 the e-log system, just run reports and find out  
14 if drivers are committing violations.

09:50:39AM 15 FedEx gave these guys plenty of time,  
16 as they're a team, and they had plenty of time  
17 off when they got back from trips. So I've  
18 looked at the logs. There's no issues there.

19 Q. Well, we can get to the logs later.

09:50:51AM 20 Do you know if FedEx audited the  
21 e-logs like you described Swift did?

22 A. I believe the e-log system that they  
23 get -- I don't know. The system goes in  
24 electronically and I believe there's an  
09:51:08AM 25 electronic method to audit at the same time.

1 Logs have been electronically audited for years.  
2 So I think all he would have to do is generate  
3 reports of violations or something. Don't know.

09:51:23AM

4 Q. Is a motor carrier required to review  
5 the driver logs?

6 A. No, sir. They're just required to  
7 maintain compliance with the regulations with  
8 regard to the hours of service.

9 Q. So why did Swift monitor them?

09:51:33AM

10 A. So we could maintain compliance with  
11 the hours of service.

12 Q. Safety as well is one issue?

13 A. Well, that's the purpose of the hours  
14 of service is maintain compliance with regard to  
15 safety so they don't get tired.

09:51:45AM

16 Q. Did you monitor their vehicle  
17 inspections as well?

18 MR. KAPP: Object to the form.

19 BY MR. LIEBERMAN:

09:51:52AM

20 Q. "You" being Swift.

21 A. Yes. And we've talked about that. We  
22 would get their receipts and make sure they had  
23 a maintenance system in place where they were  
24 working on their trucks.

09:52:06AM

25 Q. The drivers are required to log their

1 driver vehicle inspection reports under the  
2 regulations, correct?

3 A. Those reports you're talking about?

4 Q. Yeah, driver vehicle inspection  
5 reports.

09:52:15AM

6 A. Okay. I thought we were back to the  
7 other inspections. Okay.

8 MR. KAPP: And I did too. So maybe  
9 you could start over again. I'm sorry.

09:52:29AM

10 MR. LIEBERMAN: No, that's okay. I'm  
11 just segueing into this.

12 BY MR. LIEBERMAN:

13 Q. We've talked about Swift's oversight  
14 of hours of service. We've talked about Swift's  
15 oversight of maintenance of tractors. What I'd  
16 like to talk now is Swift's oversight over the  
17 driver vehicle inspection reports.

09:52:35AM

18 A. Well, if you're -- which I believe you  
19 are. You're referring to the end-of-the-day  
20 reports, yes, we would monitor those. Those  
21 would be part of the hours of service. In fact,  
22 those reports are on their logs themselves.

09:52:47AM

23 And we can discuss this a little bit,  
24 but, as you know, this was an ongoing team.

09:53:04AM

25 They were always running. It's not like they



1 were slip seating a truck where somebody drove  
2 the truck the next day, which is the purpose for  
3 these reports that the FMCSRs require.

4 Q. What I'd like to focus on is Swift's  
09:53:19AM 5 oversight of the contract drivers' vehicle  
6 inspection reports, not these particular drivers  
7 yet. We'll get into that.

8 So what I'm asking is what did Swift  
9 do with respect to the contract drivers' vehicle  
09:53:34AM 10 inspection reports?

11 A. Make sure they were submitting their  
12 reports on a daily basis through the compliance  
13 process. And if any of those reports were  
14 signed off where they were defects, to make sure  
09:53:46AM 15 that the driver, the contractor got their  
16 equipment fixed before it was placed back in  
17 service.

18 Q. So, again, these weren't just put in  
19 the files. Somebody for Swift was looking at  
09:53:57AM 20 these reports?

21 A. Yes. On not every single report, but  
22 on a audit-type basis. And, keep in mind, when  
23 these reports are submitted and the truck's  
24 going, we might not even get these reports in  
09:54:13AM 25 for 13 days or so.

1 Q. Because at the time they were paper  
2 reports, not electronic?

3 A. Correct. And it could be up to 13  
4 days after the actual truck ran. So if one  
09:54:24AM 5 report says I had to get a transmission fixed --  
6 well, that's not a good example, because the  
7 truck couldn't be dispatched. But, you know,  
8 something else had to get fixed, then we would  
9 obviously say Charlie, it sounds like you got it  
09:54:39AM 10 fixed, because you've been running for the last  
11 two weeks. I noticed on your log two weeks ago,  
12 your inspection report, that you said you  
13 couldn't run it.

14 So the fleet manager or driver manager  
09:54:49AM 15 may double-check and these guys would call in  
16 occasionally, you know, and send them  
17 information as far as their dispatch and ask  
18 them.

19 Q. Was there regular communication  
09:55:00AM 20 between Swift and the contract driver?

21 A. The communications are primarily  
22 through the AS400 system, just messages. We  
23 would require owner/operators to have the  
24 operational electronic device in their truck.  
09:55:16AM 25 We would say, Charlie, did you get that fixed?

1 I noticed the log audit says you had something  
2 broken.

3 Telephones went out about 10 years  
4 ago. I mean, in our system anyway.

09:55:29AM

5 Q. I understand.

6 A. Thank goodness.

7 Q. Was the monitoring of the contract  
8 drivers different than Swift monitoring of the  
9 noncontract drivers?

09:55:51AM

10 A. Operationally, not much different. We  
11 had the same dispatch system, AS400 system, that  
12 is the main system used to dispatch trucks. So  
13 everybody had their monitor in their truck,  
14 computerized satellite tracking, blah, blah,  
15 blah, and we would send them the same message.

09:56:09AM

16 You got to pick up a load here and deliver a  
17 load there through the same system.

18 Q. What about training? Outside of the  
19 initial onset in terms of hiring these folks and  
20 getting them their CDL license, did Swift  
21 provide any additional safety training to  
22 noncontract drivers?

09:56:24AM

23 A. I would say occasionally depending on  
24 the -- let me back up a little bit.

09:56:41AM

25 If a company driver had a crash, for

1 example, we may give that driver some additional  
2 training, post-crash training, yes.

3 Q. Reactionary?

09:56:56AM

4 A. Well, reactionary or prevent future  
5 similar crashes, sure.

6 Q. Was that provided to contract drivers  
7 as well?

8 A. It may have been provided if they --  
9 it may have been provided.

09:57:05AM

10 Q. Would that be specific to that driver  
11 or was it to your drivers?

12 A. Generally, training -- well, both.  
13 For example, if we had -- and, again, this goes  
14 over time 20 years.

09:57:20AM

15 Q. I understand.

16 A. So let's say, yeah, 10 years ago when  
17 the company wasn't so large, we had -- we would  
18 have some safety groups where drivers would be  
19 at a terminal. We may have a safety guy go over  
20 there and do a half-hour meeting, for example.

09:57:35AM

21 In that meeting it would be voluntary  
22 for anybody to attend. And contractors could  
23 voluntarily attend that general safety meeting.  
24 Company drivers could attend.

09:57:48AM

25 However, the drivers who were involved

1 in a crash, it would be mandatory for him to  
2 attend one of those training courses within a  
3 30-day period of time, for example -- I think  
4 60-day period of time.

09:58:04AM

5 MR. KAPP: Are you at a good breaking  
6 point?

7 MR. LIEBERMAN: Yeah. We can take a  
8 break.

9 (Recessed from 9:58 a.m. to

10:03:40AM

10 10:03 a.m.)

11 BY MR. LIEBERMAN:

12 Q. Moving up your resumé, sir -- your CV,  
13 excuse me. In 1990 you became the vice  
14 president of safety for Swift Transportation, is  
15 that correct?

10:03:49AM

16 A. That's correct.

17 Q. And how does that differ from director  
18 of safety?

19 A. I've always said not much difference.

10:04:00AM

20 I had a few more people working for me and it's  
21 all in the number of trucks we had about then.  
22 Like, we went from 84 to about 150. In '90 we  
23 probably had 2,500 trucks and so we just -- the  
24 department grew.

10:04:23AM

25 Q. What percentage of those approximate

1 2,500 were owner operated?

2 A. Well, I say "we," and, pardon me,  
3 because when you're with a company, it's we all  
4 the time. We have always been around 10 to 15  
10:04:39AM 5 percent contractors of the fleet. So, you know,  
6 like, when I left in 2012 we had a good 5,000  
7 contractors.

8 Q. Why did Swift decide to use only 10 to  
9 15 percent contractors?

10:04:58AM 10 MR. KAPP: Object to the form.

11 THE WITNESS: There wasn't a  
12 particular number. It's just always been that  
13 way. I think we could hire company drivers  
14 easier than have -- either recruit or find  
10:05:13AM 15 contractors that wanted to go to work for Swift.

16 It's just -- it wasn't a special  
17 number. We could have 50 percent, I think, if  
18 we wanted. It's just how it's always been. I  
19 don't know.

10:05:36AM 20 BY MR. LIEBERMAN:

21 Q. You mentioned earlier that there was  
22 GPS tracking units on your vehicles. When I say  
23 "your" I mean Swift.

24 A. Correct.

10:05:44AM 25 Q. Was that on the tractors or the

1 trailers?

2 A. That was on the tractors.

3 Q. Was anyone at Swift monitoring the GPS  
4 movements?

10:05:53AM

5 A. Certainly, yes. It was part of the  
6 whole system. And that would generally come  
7 down to the driver manager, so he knew where the  
8 driver approximately was and if they're gonna be  
9 picking up a load or delivering a load on time.

10:06:11AM

10 Q. Would it also give speed?

11 A. The monitoring would only give speed  
12 if you took a Point A to Point B to find out how  
13 many pings were between those locations. It's  
14 not like a GPS like we have on our cars that  
15 pings every so often when there's messages and  
16 those kinds of things.

10:06:31AM

17 So you would only use that to detect  
18 speed during periods of time by lat and longs at  
19 different locations. That's possible.

10:06:50AM

20 Q. To clarify, was Swift sending routes  
21 across the country?

22 A. Yes.

23 Q. Just for my edification here.

24 A. Yes. We've got all the states in the  
25 country. We have some Canadian provinces as

10:07:06AM

1 well as a Mexico operation.

2 Q. If a driver manager or someone else  
3 from Swift noticed that a vehicle was going 90  
4 miles per hour, would Swift do anything?

10:07:30AM

5 MR. KAPP: Object to the form.

6 THE WITNESS: We're talking  
7 contractors again?

8 BY MR. LIEBERMAN:

9 Q. Sure.

10:07:33AM

10 A. I think he would say you'd probably  
11 need to slow it down if he was going 90. I  
12 would say so, yes.

13 Q. Is there a difference in how that  
14 driver manager would react if it was a  
15 noncontract driver?

10:07:45AM

16 MR. KAPP: Object to the form.

17 THE WITNESS: Well, the noncontract  
18 drivers or the company-employed drivers, their  
19 trucks were governed at 65. The contractor  
20 trucks aren't mandatorily governed. We just  
21 tell them to run the speed limits.

10:07:58AM

22 BY MR. LIEBERMAN:

23 Q. That's the policy at Swift?

24 A. Yes.

10:08:06AM

25 Q. For safety reasons?



1 A. Safety and sometimes with the  
2 contractor driver to let him know that his fuel  
3 savings could be a little better if he drove  
4 slower.

10:08:17AM

5 Q. What did Swift do to monitor whether  
6 the contractor drivers abided by that policy?

7 A. I don't know. He would just tell the  
8 drivers to run the speed limits, don't get  
9 citations. Generally, the best way to monitor  
10 that would be citations.

10:08:38AM

11 Q. Again, that's reactionary, right?

12 A. If that's the word you want to call  
13 it, sure. In other words, if the driver starts  
14 picking up speed tickets, we need to say slow  
15 down. You must be running over speed.

10:08:49AM

16 Q. But prior to getting a speeding  
17 ticket, did Swift do anything to monitor the  
18 speed of the contractor drivers?

19 A. No, sir, not like the company trucks.  
20 Company truck drivers had to have their trucks  
21 governed at 65.

10:08:59AM

22 Q. Why didn't Swift, if you know, require  
23 the contractor trucks to be governed at 65?

24 A. Because we don't own the trucks.  
25 We're not in control of the trucks. We just

10:09:12AM

1 tell them to operate at the speed limit. Don't  
2 get citations.

3 Q. As a condition of contracting, you  
4 could have required that, correct? "You" being  
5 Swift.

10:09:23AM

6 MR. KAPP: Object to the form.

7 THE WITNESS: Well, as a condition of  
8 the contract, we would say you have to abide by  
9 the Federal Motor Carrier Regulations and state  
10 laws, which runs the speed limit. So as a  
11 condition of the contract, that is there, but  
12 yes.

10:09:29AM

13 BY MR. LIEBERMAN:

14 Q. In 2004 it looks like you transitioned  
15 from vice president of safety to corporate  
16 safety advisor for Swift; is that correct?

10:09:44AM

17 A. That's correct.

18 Q. Can you explain to me the difference  
19 between those two titles?

20 A. Yes. I officially retired in 2004  
21 full time, and there's more to it with financial  
22 benefits and those kinds of things. And they  
23 hired me back on to be corporate safety advisor,  
24 but that was on a part-time basis.

10:09:52AM

25 Q. What did that job entail?

10:10:12AM

1 A. That job entailed mostly working with  
2 the director of safety. They did replace the VP  
3 of safety at that point in time. I could still  
4 work with the same guy I worked with before I  
10:10:27AM 5 retired. And I was also assisting the claims  
6 group in testimony, 30(b)(6) stuff, that I was  
7 doing before I left.

8 Q. You were serving as the face of the  
9 company for those depositions?

10:10:42AM 10 A. Yes, sir.

11 Q. During that time were you testifying  
12 only on behalf of Swift, this 2004 to 2012  
13 that's listed in your CV?

14 A. Well, yes, unless I had a couple other  
10:10:59AM 15 cases. In 2004 I started I-Trans Consulting  
16 Services. And I may have had a few cases that  
17 overlapped during that period of time, which I  
18 see here was a few.

19 Q. We'll go through this list  
10:11:14AM 20 momentarily.

21 Can you describe the business of  
22 I-Trans Consulting Services?

23 A. The business would be to take calls  
24 from either plaintiff or defense counsel, and if  
10:11:27AM 25 they needed me to evaluate a case to see if the

1 carriers, drivers were in compliance with the  
2 regulations, to evaluate the case and let them  
3 know. And I would charge them a fee for that  
4 service.

10:11:40AM

5 Q. Do you consider yourself an expert in  
6 that service?

7 A. I do.

8 Q. And can you describe for the record  
9 what you consider yourself an expert in.

10:11:50AM

10 A. I consider myself an expert in  
11 primarily truck transportation and commercial  
12 drivers' safety. With regard to the  
13 regulations, recruiting, training, corporate  
14 security. I handled the security aspect of  
15 Swift. That's generally it.

10:12:07AM

16 Q. Why did you stop being the corporate  
17 safety advisor for Swift in February of 2012?

18 A. Because they had hired -- or promoted  
19 the other guy that I was working with, the VP of  
20 safety, and I was spending more time in Mexico  
21 at my home and I wanted to spend more time down  
22 there. So I could work out of my home.

10:12:27AM

23 Q. I understand.

24 And you've been doing the I-Trans  
25 Consulting business through present day,

10:12:46AM

1 correct?

2 A. Correct.

3 Q. Have you ever had a CDL?

4 A. I have not.

10:12:56AM

5 Q. Have you ever driven a  
6 tractor-tractor?

7 A. I have.

8 Q. In what capacity?

10:13:02AM

9 A. When we were setting up the school in  
10 Phoenix and a couple other locations, I was  
11 involved in driving the truck in the yard,  
12 inspections, general movements of the truck.

13 Q. Is it fair to say your experience in  
14 driving a tractor-trailer is limited to just a  
15 yard?

10:13:21AM

16 A. Correct.

17 Q. You've never taken a CDL exam?

18 A. No.

19 Q. Never sat for one?

10:13:27AM

20 A. No. I didn't have time.

21 Q. You said setting up a school.

22 What school were you setting up?

23 A. Swift Transportation has what's called  
24 a CDL school for new students, new people that  
25 want to get in the business to train and obtain

10:13:49AM

1 a commercial driver's license and then go to  
2 work for Swift.

3 With our growth over the years, we had  
4 to somehow supplement the ability to get  
10:14:02AM 5 additional drivers on board. So we had internal  
6 Swift schools as well as we had external schools  
7 throughout the country. And you know, probably,  
8 that story where there's a lot of schools that  
9 train drivers and then we would hire them on  
10:14:14AM 10 with Swift.

11 Q. Were these schools also educating  
12 contract drivers?

13 A. No, sir.

14 Q. These were strictly for noncontract  
10:14:23AM 15 driver employees?

16 A. Correct.

17 Q. Was it based off any sort of manual or  
18 literature, the education provisions of the  
19 school?

10:14:35AM 20 A. Well, I would generally say that  
21 Professional Truck Driver Institute manual would  
22 be one.

23 Q. And you've attached some of that to  
24 your report, correct?

10:14:45AM 25 A. I have.

1 Q. Did you have any involvement in  
2 drafting or writing the PTDI manual?

3 A. I didn't have any involvement in  
4 writing the thing, but I was on their board for  
10:14:55AM 5 a period of time in the '90s when we developed  
6 the training program as an industry advisor  
7 basically.

8 Q. Were you a teacher at a Swift school?

9 A. No, sir. I was vice president of  
10:15:16AM 10 safety ever since 1990.

11 Q. Have you ever given anyone a CDL exam?

12 A. No, sir.

13 Q. Have you ever given a training class  
14 for someone to obtain their CDL?

10:15:32AM 15 A. To obtain a CDL, no, other than  
16 speaking to some of our groups in Phoenix before  
17 they graduated about the importance of safety.  
18 More of a management safety advisor before they  
19 actually graduated, went to the State and got  
10:15:50AM 20 their CDL.

21 Q. Have you ever instructed a class full  
22 of drivers on safety issues?

23 A. Sure.

24 Q. Please describe those.

10:15:57AM 25 A. Primarily from '84 until I would say

1 around 1990 with the growth, and then I had  
2 training instructors that would do most of that  
3 for me.

4 Q. Was this through the Swift school?

10:16:13AM

5 A. No. It would just be for drivers that  
6 were working for Swift as company employees and  
7 I would hold training courses or I would go out  
8 to the drivers room and talk to drivers who  
9 happened to be sitting there.

10:16:28AM

10 Q. What topics were discussed?

11 A. I would discuss topics that were of  
12 interest during the period of time. You'd have  
13 two major issues, whether it's summer or winter  
14 driving, primarily winter driving. If winter's  
15 starting to come on, we'd talk about safety  
16 aspects of driving in the wintertime.

10:16:44AM

17 If we are having issues with cargo  
18 issues, for example, I would talk about some of  
19 our flatbed operations as far as proper tie-down  
20 procedures and those kinds of things. Freight  
21 falling in trailers, those kinds of things.

10:17:01AM

22 Just whatever kind of happens to start  
23 rising. I would run reports to find out what  
24 problems were becoming more frequent than other  
25 times and we would go out and hit some of those

10:17:19AM



1 topics.

2 We would also have brochures we would  
3 hand out to drivers. We would put posters up  
4 in -- there's a lot of vendors that have -- that  
10:17:33AM 5 sell posters we would purchase to put on driver  
6 room walls all throughout our terminals  
7 throughout the country. We had about 38  
8 subterminals.

9 And the terminal people would put  
10:17:43AM 10 those posters up and we would have stacks of,  
11 like, a safety bulletin. And I would make  
12 safety bulletins that we would have there by the  
13 dispatch where drivers -- anybody, company  
14 drivers, contractors could pick up.

10:17:56AM 15 Q. Sure. What I'm hearing is kind of  
16 three areas. You have posters on the wall, you  
17 have brochures handing out, and then you have  
18 individuals like yourself that would also  
19 give -- I don't know if lectures is the correct  
10:18:08AM 20 word, but a presentation on various issues; is  
21 that correct?

22 A. It might be a short safety meeting,  
23 15 minutes, half hour, because drivers are  
24 coming and going. That's the difficult thing.  
10:18:18AM 25 If you've got two drivers that only work local

1 every day, you can talk to them for a few  
2 minutes, but when you got drivers coming and  
3 going, you've got to do a little bit more  
4 efficient methods.

10:18:27AM

5 Q. Got to make your point quick, right?

6 A. Not make the point quick, but just  
7 tell them where to get the best information.  
8 And online training is the best, because a lot  
9 of drivers have computers now and we tell them  
10 to go into the FMCSR websites, hit safety, and  
11 it goes through a lot of the latest general  
12 topics of safety.

10:18:41AM

13 Q. Why did Swift do this?

10:18:59AM

14 A. Just to help promote safety, reduce  
15 crashes, collisions, cargo claims, on-the-job  
16 injuries.

17 Remember, there's three issues I talk  
18 about. It's not all just truck crashes. It's,  
19 you know, keep yourself from getting hurt,  
20 prevent cargo claims from tying equipment down  
21 or making sure it's packaged, along with  
22 accidents.

10:19:12AM

23 Q. Right. So to keep the drivers from  
24 getting hurt, keep the cargo from getting hurt  
25 or to keep other motorists from getting hurt,

10:19:22AM

1 right?

2 A. Or drivers.

3 Q. That's what I mean.

4 A. Commercial drivers.

10:19:29AM

5 Q. Any other motorist on the road?

6 A. Any other motorist or drivers.

7 Q. Right. Swift took steps to attempt to

8 educate their contract and noncontract drivers

9 on safety issues related to those three areas,

10:19:43AM

10 correct?

11 MR. KAPP: Object to the form.

12 THE WITNESS: Correct. Similar to

13 what FedEx did, yes.

14 BY MR. LIEBERMAN:

10:19:46AM

15 Q. We can talk about in a little bit what

16 FedEx did. I'm focused on Swift at the moment.

17 A. Okay.

18 Q. Any of these brochures or meetings or

19 posters talk about tire maintenance?

10:19:59AM

20 A. Well, you're talking a 20-year period

21 of time.

22 Q. Sure.

23 A. And not that I recall. It's pretty

24 well-known, among particularly experienced

10:20:13AM

25 drivers, that tires -- you run tires about 110

1 pounds. So that's not something new with regard  
2 to air pressure.

3 Q. What about size of tires? Any of  
4 these -- again, I'm talking about the meetings,  
10:20:29AM 5 the brochures, or the posters. Anything talk  
6 about size of tires?

7 A. Well, the size of tires, our shops --  
8 we have shops throughout the country and they  
9 monitor the size of tires that go on our company  
10:20:42AM 10 trucks. That's taken care of.

11 The contractors have their own trucks  
12 and they need to worry about their own trucks  
13 and sizes and purchase their own tires.

14 Q. When a truck came back from a route to  
10:20:56AM 15 whatever Swift hub it returned from, did Swift  
16 do any inspection of the tractor-trailer?

17 A. Yes. When the company trucks came in  
18 we would have -- some of the terminal locations  
19 have mechanics on the fuel island that when  
10:21:17AM 20 they're fueling the truck, then we would have a  
21 mechanic check equipment, mirrors, and those  
22 kinds of things on some of the terminals.

23 Q. How many percentagewise do you think  
24 had that service available?

10:21:31AM 25 A. Oh, maybe three or four of the larger

1 terminals. And, again, that would be the  
2 company trucks. Owner-operators are involved in  
3 their own inspections.

10:21:46AM

4 Q. Did Swift ever inspect owner-operator  
5 tractors after the lease was entered into?

6 A. If the owner-operators hired Swift  
7 Transportation to do any work for them they  
8 would.

10:21:58AM

9 Q. What type of work could an  
10 owner-operator hire Swift to do?

11 A. The same maintenance they could hire  
12 Warner or Redbone Tire or anybody else to work.  
13 And we would bill them for the shop service.

10:22:10AM

14 Q. Was that a commonly purchased service  
15 by Swift's owner-operators?

16 A. I don't know if it was common or not.  
17 It happened probably frequently. The  
18 owner-operators are responsible to choose their  
19 shop.

10:22:26AM

20 Q. Can you give a percentage on -- well,  
21 strike that.

22 My understanding, you had about 10 to  
23 15 percent -- and I don't mean to misquote you.  
24 Correct me if I'm wrong.

10:22:35AM

25 But Swift had about 10 to 15 percent

1 of contractor tractor-trailers at any given  
2 time?

3 A. I would say around 5 to 8 percent.  
4 Maybe out of 20,000 trucks we would have maybe  
10:22:47AM 5 5,000 owner-operators or so.

6 Q. Let's take that estimate of 5,000  
7 owner-operator trucks.

8 What percentage of those 5,000 would  
9 use Swift to be their maintenance provider?

10:22:58AM 10 A. I have no idea.

11 Q. More than 50 percent?

12 MR. KAPP: Object to the form.

13 THE WITNESS: I wouldn't know. I  
14 wouldn't know. And it would depend if a driver  
10:23:11AM 15 came in from back East and needed something done  
16 quickly. He could get with his manager and  
17 schedule his truck to go in the Swift shop and  
18 get it repaired by one of the qualified  
19 mechanics.

10:23:23AM 20 BY MR. LIEBERMAN:

21 Q. Did each hub have a Swift shop on  
22 site?

23 A. No. The larger ones did. I would say  
24 maybe 50 percent, maybe less, would have some  
10:23:37AM 25 kind of shop on site. Out of 32 terminals,

1 maybe 10, 15, something like that.

2 Q. Was a full-service mechanic shop at  
3 each spot?

10:23:51AM

4 A. It would be -- yes, I would classify  
5 it as full service, yes, to take care of those  
6 company trucks.

7 Q. Well, you also said that the  
8 contractors could use those services as well  
9 should they choose to.

10:24:01AM

10 A. Correct. When I'm saying full  
11 service, it would have to be full service  
12 because they've got to work on our company  
13 trucks too.

14 Q. I'm with you.

10:24:08AM

15 A. Sure.

16 Q. Did Swift contract out any maintenance  
17 work on their company trucks?

18 A. Yes. Primarily if they -- if there's  
19 a roadside problem, like the FleetNet or  
20 something that they would have -- send a vendor  
21 out to work on the truck.

10:24:24AM

22 And I'm sure that there may be some  
23 major maintenance completed on a truck. Our  
24 service bays are pretty much service.

10:24:37AM

25 Q. I understand.

1 A. If the transmission needs to be done,  
2 yes, we would farm those kinds of things out,  
3 body work and those kinds of things.

10:24:58AM

4 Q. Did we adequately cover your  
5 background with respect to your trucking  
6 experience?

7 A. Other than personal awards and  
8 positions, pretty much, yes.

10:25:20AM

9 Q. Did we adequately cover your  
10 background with respect to your education?

11 A. Education, yes.

12 Q. Do you have any certificates -- strike  
13 that.

10:25:33AM

14 I see you have them listed here on  
15 page 23, right?

16 A. Correct.

17 Q. Have you ever experienced a tire  
18 failure of any kind while driving a vehicle?

19 A. I have not.

10:26:00AM

20 Q. Have you ever been retained outside of  
21 this case by any other lawyer that has made an  
22 appearance in this case? And I can give you a  
23 list of law firms, if needed.

10:26:20AM

24 A. No. I believe I've looked at that  
25 list -- well, maybe not. But I've not been



1 retained by anybody, that I'm aware of, in this  
2 case.

3 Q. So you've never been retained prior to  
4 this case by Mr. Kapp or his firm?

10:26:33AM

5 A. Mr. Kapp I have on a case.

6 Q. What was that case?

7 A. I knew you were gonna ask that. It  
8 didn't go to a trial or deposition. It was a  
9 truck case, maybe four or five years ago.

10:26:50AM

10 Something like that.

11 MR. KAPP: Actually, it was 10 years  
12 ago.

13 THE WITNESS: 10. Could be.

14 BY MR. LIEBERMAN:

10:26:56AM

15 Q. Was it a personal injury case?

16 A. I can't remember that. It had to do  
17 with a truck, big truck.

18 Q. Fair enough.

19 What about Holland & Knight; ever been  
20 retained by Holland & Knight?

10:27:11AM

21 A. No. I'm familiar with the firm  
22 because one of my good, old friends works for  
23 Holland & Knight in Idaho, but other than that,  
24 no.

10:27:23AM

25 Q. Who's that?

1 A. Steve Anderson. We were born and  
2 raised together pretty much. I think he's still  
3 with the firm. I don't know.

4 Q. What about Jim Fitzgerald's firm?

10:27:39AM

5 A. No. Never done anything with Jim.

6 Q. What about Steve Kline?

7 A. Steve Kline, doesn't ring a bell.

8 Q. What about Loyd Smith or Murane &  
9 Bostwick, outside of this case?

10:28:05AM

10 A. No.

11 Q. What about Kent Rutledge or Peter  
12 Howard of Lathrop & Rutledge?

13 A. That's not familiar, no.

14 Q. Diana Rhodes?

10:28:18AM

15 A. No.

16 Q. Sean Gamble?

17 A. No, sir.

18 Q. Monty Barnett?

19 A. No, sir.

10:28:27AM

20 Q. Khale Lenhart?

21 A. No, sir.

22 Q. Tara Nethercott?

23 A. No, sir.

24 MR. KAPP: Let's go off the record  
25 real quick.

10:28:36AM

1 (An off-the-record discussion ensued.)

2 BY MR. LIEBERMAN:

3 Q. Ever been retained or provided  
4 testimony for a tire manufacturer?

10:29:10AM

5 A. No, sir.

6 Q. Besides FedEx and Swift, any other  
7 trucking companies that have retained you or  
8 that you've provided testimony on their behalf?

9 A. Yes, sir.

10:29:21AM

10 Q. Which ones?

11 MR. KAPP: Are you talking about --  
12 you said provided testimony for. So okay.

13 MR. LIEBERMAN: Sure. I can limit it  
14 to that.

10:29:33AM

15 THE WITNESS: Sure. Thank you.

16 Werner Enterprises, Gainey  
17 Transportation, USA Plates, Helwig & Son  
18 Trucking, Kiswani Trucking, C.R. England,  
19 Incorporated, Michels Corporation.

10:30:04AM

20 Now, when you say "provided testimony  
21 for," I need to probably back up.

22 BY MR. LIEBERMAN:

23 Q. Okay.

24 A. Because that would -- shall I start  
25 over?

10:30:14AM

1 Q. No. I was just curious in general. I  
2 don't need a detailed account of every trucking  
3 company that you've worked with or consulted  
4 for. I was just trying to get a brush stroke of  
5 your business practice.

10:30:27AM

6 So I think you've provided me at least  
7 with what I was looking for at this point.

8 A. Okay. Thank you. Some of these --  
9 about half are plaintiff, half defense. And so  
10 provided testimony for, may be for the  
11 plaintiff.

10:30:36AM

12 MR. LIEBERMAN: Let's mark, if we can,  
13 your updated testimony list as 233.

14 (Deposition Exhibit No. 233 marked for  
15 identification.)

10:31:15AM

16 BY MR. LIEBERMAN:

17 Q. Obviously, today's deposition's not  
18 listed on here, but I count 17 entries on your  
19 form.

20 Can you tell me of those entries which  
21 one you were retained on behalf of the plaintiff  
22 and which one you were retained on behalf of the  
23 defendant. And, if you can, write P next to the  
24 ones you were retained by the plaintiff and D  
25 next to the ones you were retained by the

10:31:25AM

10:31:37AM

1 defendant.

2 A. On this form?

3 Q. If you can. Thank you.

4 A. I might miss one or two, but I'll be  
5 very close.

10:31:46AM

6 Q. I understand.

7 MR. KAPP: Off the record.

8 (An off-the-record discussion ensued.)

9 BY MR. LIEBERMAN:

10:33:28AM

10 Q. It looks like you've testified about  
11 five times on behalf of a plaintiff; is that  
12 correct?

13 A. That would be correct, if that's what  
14 I marked down.

10:33:37AM

15 Q. This one kind of looks like either a D  
16 or a P.

17 A. It's a D. I'm sorry.

18 Q. That's okay.

19 A. One, two, three, four, five, six.

10:33:50AM

20 Q. Okay. Six. Thank you.

21 MR. FITZGERALD: Just so we don't have  
22 to come back to this, are these all the  
23 testimonies, depositions and trial?

24 MR. LIEBERMAN: That was gonna be my  
25 next question.

10:34:03AM

1 MR. FITZGERALD: Thank you.

2 BY MR. LIEBERMAN:

3 Q. Is this your complete list of your  
4 trial and deposition testimony for the last four  
5 years?

10:34:11AM

6 A. It is.

7 Q. Have you published anything?

8 A. No, I haven't.

9 Q. If you can turn back to your report,  
10 which we marked as 232.

10:34:47AM

11 Does this report accurately summarize  
12 your opinions in this case?

13 A. Does up until now, yes.

14 Q. Are there additional opinions that you  
15 have rendered since authoring this report?

10:34:59AM

16 A. There are not. I know there are some  
17 depositions that are going to be happening in  
18 the future. So I may reserve my right to review  
19 that information and make any supplemental  
20 reports, if necessary.

10:35:15AM

21 Q. Sure. And I recognize that there's  
22 been other documents disclosed since you  
23 authored this report.

24 What I'm asking first is if any of  
25 those new documents that you received have

10:35:25AM

1 altered or changed your opinions as they exist  
2 in the current report?

3 A. I don't believe so.

10:35:37AM

4 Q. And as of right now, you don't have  
5 plans to render a supplemental report. You are  
6 simply reserving your right should new  
7 information arise?

8 A. Correct.

10:35:48AM

9 Q. Does this report also contain all the  
10 bases for your opinions?

11 A. It does not. I have made a few other  
12 copies that -- the regulations might be in my  
13 report. And I've also conducted a review of  
14 both Kehler and Marks' logs with regard to  
15 inspections.

10:36:16AM

16 Q. And that would be the daily log  
17 inspection review that we talked about at the  
18 onset of this deposition that is not on the  
19 flash drive, correct?

10:36:22AM

20 A. Correct.

21 Q. And, likewise, that information is at  
22 least not detailed within the report that we're  
23 about to look at?

24 A. That is correct.

10:36:31AM

25 Q. It looks like this report is dated

1 October 31, 2015; is that true?

2 A. It's true.

3 Q. On page 4 under Case Assignment, it  
4 says you were retained on October 22, 2014; is  
5 that true?

10:36:58AM

6 A. That's true.

7 Q. So you had nine days in which to  
8 review the materials and draft this report?

9 A. That's correct. It was a quick  
10 report, as I recall.

10:37:04AM

11 Q. And originally you were retained by  
12 Mr. Loyd Smith on behalf of FedEx; is that  
13 correct?

14 A. Yes, sir.

10:37:13AM

15 Q. Starting on page 1 and going into  
16 page 2, there's a bullet point list of documents  
17 you've received and reviewed.

18 Is that the totality of the documents  
19 you've received and reviewed up to the point of  
20 drafting this report?

10:37:26AM

21 A. Up to the time I drafted the report,  
22 correct.

23 Q. Is there anything in your file that  
24 you obtained independently of the information or  
25 documents you received from counsel?

10:37:35AM



1 A. No, sir. Other than making some  
2 copies of the FMCSRs, no, sir.

3 Q. You didn't go into Google and research  
4 X, Y, Z and print those out, things like that,  
5 right?

10:37:56AM

6 A. No, sir.

7 Q. And you have your Federal Motor  
8 Carrier safety handbook with you today.

9 A. That's correct. As well as a PTDI,  
10 Professional Truck Driver Training manual.

10:38:05AM

11 Q. Is that the black binder?

12 A. It is.

13 Q. The FMCSRs that you have, is that a  
14 2007 version?

15 A. It is a 2007 version. I haven't  
16 updated that yet, but when I review the  
17 regulations, I usually review online. I  
18 double-checked and the regulations that were  
19 back then are the same regulations that we have  
20 today. So that's why I brought this book.

10:38:36AM

21 Q. Looking on page 2, it's the first  
22 paragraph, it talks about the items you've  
23 relied upon and it looks like -- I'll just read  
24 into the record.

10:38:51AM

25 I have also relied on the Federal

1 Motor Carrier Safety Regulations (FMCSRs), the  
2 FMCSR interpretations, regulatory guidance,  
3 Wyoming traffic rules and laws, Commercial  
4 Driver's License, CDL manuals, including the  
10:39:07AM 5 Utah CDL manual, the Professional Truck Driver  
6 Institute, (PTDI) Tractor-Trailer Driver  
7 Workbook, 3rd edition, and my knowledge and  
8 experience in the truck transportation industry.

9 Did I read that correctly?

10:39:21AM 10 A. You did.

11 Q. Are those all the items you've relied  
12 upon in rendering your opinions in this report?

13 A. Yes.

14 Q. Towards the bottom of this second  
10:39:36AM 15 page, the last sentence -- and it's not  
16 complete, but it says, "I have assisted with the  
17 development of national truck transportation  
18 industry standards as a former member of the  
19 board of directors for the Professional Truck  
10:39:48AM 20 Driver Institute of America."

21 Is that what we talked about earlier  
22 in the deposition when you were a board member  
23 for PTDIA?

24 A. Correct, now currently PTDI.

10:39:58AM 25 Q. Dropped a letter?

1 A. Dropped the America, because they have  
2 Canadian people involved now.

3 Q. We move onto the Collision Synopsis.  
4 My question is pointed. In the middle of that  
10:40:21AM 5 synopsis it says, Kehler traveling westbound on  
6 I-80 blew a steer tire on the left front of his  
7 tractor causing his truck and trailers to  
8 abruptly cross left over into the center  
9 divider.

10:40:32AM 10 Do you see the sentence I just read?

11 A. I do.

12 Q. Do you have an opinion as to whether  
13 the tire blew out?

14 A. Only based on Mr. Kehler's deposition  
10:40:46AM 15 of what occurred. And, again, the collision  
16 synopsis comes -- no, that's my synopsis, I'm  
17 sorry. It's not from the police report.

18 Q. I understand the synopsis as a whole  
19 is kind of your general understanding of the  
10:41:03AM 20 file materials you reviewed and you're just  
21 trying to capture in a snapshot what occurred in  
22 this crash, right?

23 A. That is correct.

24 Q. You don't have an opinion as to the  
10:41:12AM 25 failure mode of the subject tire, do you?

1 A. I don't.

2 Q. You don't have any --

3 A. Based on deposition information.

4 Q. You don't have any expertise in tire  
5 failure, correct?

10:41:21AM

6 A. Correct.

7 Q. Or tire design?

8 A. Correct.

9 Q. Or tire manufacture?

10:41:25AM

10 A. Correct.

11 Q. This sentence also states that the  
12 steer tire on the left front of the tractor  
13 caused the truck and trailers to abruptly cross  
14 left.

10:41:39AM

15 Do you have an opinion with respect to  
16 the vehicle dynamics in this case?

17 A. No. I don't have an opinion. The  
18 synopsis is based on other experts and their  
19 crash analysis.

10:41:53AM

20 Q. So you are not opining that a tire  
21 failure caused this crash, correct?

22 A. Only what I've read based on  
23 Mr. Kehler's deposition and other experts,  
24 correct.

10:42:03AM

25 Q. I understand that.

1           You don't have the opinion that a tire  
2 failure caused this crash, correct?

3           A. Correct.

10:42:19AM

4           Q. Do you have an opinion as to the cause  
5 of this crash?

6           A. Only based on the deposition testimony  
7 from Kehler and the others that a tire blew,  
8 pulled him left. That's all.

10:42:34AM

9           Q. But, again, you're not opining what  
10 the cause of the crash is; that's not your task  
11 in this case?

12           MR. KAPP: Object to the form.

10:42:42AM

13           THE WITNESS: It's not my task in this  
14 case, but only the fact that the reason the  
15 truck pulled left is because the tire gave way  
16 or blew or failed.

17 BY MR. LIEBERMAN:

10:42:55AM

18           Q. This is what I'm trying to understand.  
19 Are you offering an opinion as to the cause of  
20 this crash and, if so, what is that opinion?

21           MR. KAPP: Do you mean the mechanism  
22 by which the truck left the road?

23 BY MR. LIEBERMAN:

24           Q. Do you understand my question?

10:43:09AM

25           MR. KAPP: Object to the form.

1 THE WITNESS: Well, first of all, I'm  
2 just giving a synopsis here. And what I'm  
3 saying is, no, I don't have an opinion as to why  
4 the tire blew or failed, but I do have an  
10:43:22AM 5 opinion that that would be one reason why the  
6 truck would pull left.

7 If the tire went, failed, and then  
8 various linkage and parts in the left front of  
9 the truck steering would gouge the roadway and  
10:43:38AM 10 that could pull the truck.

11 BY MR. LIEBERMAN:

12 Q. What's the basis for your opinion that  
13 a blown steer tire would cause the vehicle to go  
14 left?

10:43:50AM 15 A. Because if you don't have a tire on  
16 the left front, if that's gone, substantially  
17 gone, then you're down to metal and parts that  
18 may be gouging the roadway resulting in what  
19 Kehler testified about, he couldn't steer the  
10:44:06AM 20 vehicle.

21 Q. Was there any gouging in the westbound  
22 lanes?

23 A. There may have been. I'm not sure.

24 Q. You didn't study this?

10:44:12AM 25 A. I didn't study it.

1 Q. Okay. Have you ever read any  
2 literature on vehicle dynamics on a steer axle  
3 failure?

4 A. No, I haven't.

10:44:20AM

5 Q. Are you familiar with Don Tandy?

6 A. I'm not.

7 Q. Are you familiar with Rich Fay?

8 A. I'm not.

9 Q. Gray Beauchamp?

10:44:27AM

10 A. Fay Engineering. I'm familiar with  
11 Fay Engineering.

12 Q. You might know that name from this  
13 case, right?

14 A. Yes.

10:44:34AM

15 Q. Besides this case, have you ever heard  
16 of Fay Engineering?

17 A. Yes. During the last 20 years, I know  
18 there's an engineering group called Fay  
19 Engineering.

10:44:44AM

20 Q. So, again, I understand you're  
21 speculating to some degree here; is that true?

22 A. Well, I'm speculating to the point  
23 that when a -- if a truck loses a tire on the  
24 left front, something's going to happen that  
25 will pull the truck left, if the left steer tire

10:45:00AM

1 blows.

2 Q. And that's based upon what?

3 A. It's based upon my training and  
4 experience in the past where when a tire blows,  
10:45:17AM 5 whether it's right or left, it will pull the  
6 truck.

7 Q. Well you've never personally  
8 experienced a tire disablement you told me,  
9 correct?

10:45:23AM 10 A. Correct.

11 Q. And you've never had a CDL, so you've  
12 never driven a tractor-trailer at highway  
13 speeds, correct?

14 A. Correct.

10:45:29AM 15 Q. So what experience do you have that a  
16 tire failure on a steer axle tire on a  
17 tractor-trailer would cause the vehicle to move  
18 left?

19 A. Based on accident investigations that  
10:45:41AM 20 I've conducted for Swift involving over 20,000  
21 trucks where when tires failed, it would pull  
22 the truck one way or another.

23 Q. You investigated accidents for Swift?

24 A. Yes, sir.

10:45:54AM 25 Q. Okay. Because I asked you before if



1 we covered your background with respect to your  
2 experience and you said yes. So now we've got  
3 to go back into that.

10:46:05AM

4 Explain to me what your role was with  
5 investigating accidents for Swift.

10:46:20AM

6 A. Okay. And it depends on what time  
7 period of my employment. When I first hired on  
8 with Swift, I would generally go on most of the  
9 truck crashes because we were primarily running  
10 between Phoenix and Los Angeles and the Bay  
11 area. So I was close by to actually physically  
12 investigate the truck crashes.

10:46:36AM

13 After that I would review about every  
14 truck crash we've had based on police reports,  
15 driver reports, photographs, and other materials  
16 we would get in from the claims group to make --  
17 to determine whether it's preventable or  
18 nonpreventable. So I would virtually look at  
19 every report.

10:46:48AM

20 So based on those situations -- and  
21 that's any kind of crash -- if a tire failed or  
22 blew, whether it's right or left and the truck  
23 pulled, that would be where I get my opinions  
24 from.

10:47:01AM

25 Similar -- this case is similar to

1 some of those cases that I've investigated.

2 Q. In terms of your investigation of  
3 those other cases, did you inspect the actual  
4 tractor?

10:47:13AM

5 A. No. I don't think I did. We usually  
6 had adjusters or shops inspect the tractor.

7 Q. And you would rely on the adjuster's  
8 report?

10:47:23AM

9 A. Well, the adjuster's report,  
10 photographs, as well as an inspection by  
11 qualified mechanics.

12 Q. A Swift mechanic?

10:47:33AM

13 A. It could have been a Swift mechanic or  
14 could have been another mechanic at a shop  
15 generally where the truck is towed.

16 Q. Did you inspect the scenes of these  
17 crashes?

18 A. Yes.

10:47:39AM

19 Q. You would go physically out there and  
20 inspect the scene?

21 A. I would, early on. Not when we  
22 started having a large number of trucks. But  
23 back in the early '80s I would go to the scenes,  
24 particularly if they were out west here.

10:47:50AM

25 Q. Why did you stop?

1 A. We just got too big and I had other  
2 people do those kinds of things.

3 Q. What would those people do when they  
4 got to the scene?

10:47:58AM

5 A. What happened is we changed from -- as  
6 we grew with the company, we would primarily  
7 hire independent adjusters that would go to the  
8 scene or accident investigators that would go to  
9 the scene. I wouldn't go to the scene because

10:48:11AM

10 we could get them there faster.

11 And they would provide reports. So  
12 there was a lot of information, photographs,  
13 reports, police reports that would come into  
14 Swift Transportation and I would review those.

10:48:23AM

15 Q. Did they take measurements?

16 A. Oh, yes.

17 Q. Just trying to get a sense of what it  
18 is --

10:48:32AM

19 A. Measurements are pretty well always  
20 taken. I've been investigating accidents since  
21 I was on the police department. And so just  
22 through accident investigation, particularly  
23 truck accidents, when a tire failed or a tire  
24 fell off or something like that, then you would

10:48:46AM

25 have a lot of information that tells me what the

1 truck did, which is similar to what this truck  
2 did in the FedEx case.

3 Q. I need to unpack that a little bit  
4 here.

10:49:01AM

5 Were you rendering opinions for Swift  
6 as to the accident reconstruction aspect of  
7 these crashes?

10:49:13AM

8 A. No, sir. No, sir. I would just read  
9 the reports when truck tires failed or when  
10 truck tires fell off and looked at and  
11 remembered the similarities on what happened to  
12 the truck after the tire failed or fell off in  
13 the event the lug nuts were run down. And it  
14 would generally pull right or left.

10:49:28AM

15 So as far as a reconstructionist, I am  
16 not. But I do know, through investigation of  
17 accidents over the years, typically what happens  
18 to a truck at road speeds similar to what has  
19 happened with the FedEx truck with a tire that  
20 came off or failed.

10:49:43AM

21 Q. Being what? What happens?

22 A. It would pull left or right depending  
23 on the tire that came off or failed.

24 Q. Can you quantify the pull?

10:49:55AM

25 A. Well, again, it depends on the

1 specifics of the crash.

2 Q. I'm talking about this crash.  
3 Straight ahead, 70 some miles per hour, left  
4 front tire failure. Can you quantify the pull,  
10:50:08AM 5 in your opinion?

6 A. Based on what the driver said, the  
7 steering wheel went left and he couldn't move it  
8 to the right, which is what most drivers --  
9 which is what happens with many drivers that  
10:50:18AM 10 have a tire that fell off or failed.

11 Q. Is it your understanding of the  
12 testimony of Mr. Kehler that he testified the  
13 steering wheel went left?

14 A. No. That he couldn't steer to the  
10:50:27AM 15 right.

16 Q. He testified it was locked up,  
17 correct?

18 A. Locked up, yes, sir.

19 Q. So it didn't go left. There's no  
10:50:34AM 20 evidence the steering wheel turned left,  
21 correct?

22 A. Well, I know the truck went left  
23 because it went across the median.

24 Q. That's not my question.

10:50:40AM 25 There's no evidence the steering wheel

1 went left, correct?

2 MR. KAPP: Sorry? Read that back,  
3 please.

4 MR. LIEBERMAN: I can repeat it.

10:50:46AM

5 BY MR. LIEBERMAN:

6 Q. There's no evidence the steering wheel  
7 turned left, correct?

8 MR. KAPP: Object to the form.

10:50:52AM

9 THE WITNESS: I don't know. I'd have  
10 to go through his deposition again. I do know  
11 that it was locked up and I don't know when it  
12 locked up or where, but the truck definitely  
13 went left.

14 BY MR. LIEBERMAN:

10:51:03AM

15 Q. And your opinion that the truck went  
16 left is what exactly?

17 A. Due to the left front tire failing,  
18 coming off, exploding, whatever.

19 Q. You don't know the failure method?

10:51:15AM

20 A. I don't know the failure method,  
21 but ...

22 Q. Do you know where it failed?

23 A. You mean on the roadway? I don't know  
24 where it failed. All I know is that a tire came  
25 off, exploded, and the left front of the truck

10:51:25AM

1 went down -- obviously when you don't have a  
2 tire -- and it pulled him left. He couldn't  
3 steer.

4 Q. And can you quantify the pull to the  
10:51:36AM 5 left in either degrees per g or some other  
6 method?

7 A. No. I'm not a reconstructionist.

8 Q. Do you know what degrees per g is?

9 A. I don't.

10:51:45AM 10 Q. Is it fair to say that your opinion  
11 that the disabled tire pulled the tractor left  
12 is based primarily on what was told in the  
13 depositions?

14 A. I would say primarily, yes.

10:51:58AM 15 Q. And then secondarily based on what?

16 A. I would just say primary -- well, I  
17 would say secondarily based on my investigation  
18 of crashes in the past where a tire fell off or  
19 failed.

10:52:13AM 20 Q. And how many --

21 A. The trucks typically will react and  
22 move in the same manner when you lose a tire.  
23 You don't have the tire on the right or  
24 left-hand side.

10:52:42AM 25 Q. Under Involved Vehicles on the same

1 page of your report -- strike that. Let me ask  
2 a couple more questions about this.

3 What testing have you done with  
4 respect to steer axle tire failures?

10:53:06AM

5 A. I have not done any testing.

6 Q. And what review of literature have you  
7 done on steer axle tire failures on  
8 tractor-trailers?

10:53:18AM

9 A. I've not conducted any investigations  
10 of literature on tire failures.

11 Q. Your methodology in this case in  
12 reaching the opinion we've been talking about is  
13 a review of the deposition transcripts, correct?

10:53:30AM

14 A. As well as my experience investigating  
15 crashes in the past with similar situations  
16 where a tire failed or fell off on either the  
17 right- or left-hand side.

18 Q. How many of these investigations have  
19 you conducted in your career?

10:53:40AM

20 A. With Swift?

21 Q. In your entire career.

22 A. Probably 15 or 20.

23 Q. When's the last one that you  
24 conducted?

10:53:56AM

25 A. Probably before 2004, I would say.



1 Q. Under Involved Vehicle section on  
2 page 3 of your report, the last entry says,  
3 "Owner," and you list FedEx Ground Package  
4 Systems.

10:54:22AM

5 Is it your understanding that FedEx  
6 owned the tractor in this case?

10:54:32AM

7 A. No. They're the owner of the  
8 trailers. There's a tractor owner, Chris  
9 Rodwick, above under Vehicle 1. And then your  
10 trailer's owner would be FedEx Ground.

11 Q. Thank you.

12 On the next page it says, "Cargo  
13 21,485 pounds."

10:54:46AM

14 From where did you get that  
15 information?

16 A. I got that from the sum total of both  
17 of the transportation bills. There was about  
18 9,000 pounds on each trailer. I just added that  
19 weight together.

10:55:00AM

20 Q. Do you know how those pounds were  
21 loaded onto each trailer?

22 A. No, sir. It was a box trailer, I  
23 know, and, I guess, typical FedEx packages, they  
24 might load them with pallets, they might not.  
25 They might load them on the floor. I don't

10:55:13AM

1 know.

2 Q. Do you know how the weight was  
3 distributed in each trailer?

4 A. I don't.

10:55:19AM

5 Q. Is that something Swift concerned  
6 itself with, to your knowledge?

7 A. On how loads were distributed --

8 Q. Yes.

9 A. -- or loaded?

10:55:27AM

10 Every company would be concerned about  
11 how equipment's loaded or packages are loaded.  
12 You have to have certain -- depends on the  
13 weight. You've only got 21,000 pounds on two  
14 trailers. So it's not an issue like you need to  
15 not have enough weight to exceed your 80,000  
16 GVWs. So it's not like they had to stack the  
17 trailers.

10:55:44AM

18 Q. Should the heavier trailer be in front  
19 or behind?

10:55:57AM

20 A. Oh, the FedEx trailer, the heavier one  
21 would be -- gosh, I forget now. Not what  
22 Mr. Marks said it should have been. I think to  
23 the rear.

10:56:10AM

24 Q. What's your opinion on how it should  
25 be loaded, if you have one?

1 A. I don't have one right now. I know  
2 that there was some issues about what Marks  
3 thought it would be, but FedEx said differently.  
4 But I think heavier trailer to the rear.

10:56:32AM

5 But, one more thing, there wasn't much  
6 difference in the weight of the trailers.

10:56:48AM

7 Q. Under Case Assignment section on  
8 page 4 it says: Case assignment was received by  
9 Attorney Loyd Smith on October 22, 2015, with an  
10 understanding to examine evidence provided to  
11 I-Trans Consulting Services and determine  
12 whether the actions or inactions of Brian Kehler  
13 and/or CLR Transportation and FedEx were in  
14 compliance with the applicable federal and state  
15 laws, rules, and transportation industry  
16 standards of care.

10:57:00AM

17 Did I read that assignment correctly?

18 A. You did.

10:57:07AM

19 Q. Was that, in fact, the assignment you  
20 received?

21 A. It was based on our conversation with  
22 Mr. Smith and what he wanted me to do. I put it  
23 together like I typically would in these kinds  
24 of words.

10:57:20AM

25 In other words, he doesn't tell me in

1 those words what to do. He just tells me what I  
2 needed to do and that appeared to be what he was  
3 asking me to do.

4 Q. Is that, in fact, what you did?

10:57:34AM

5 A. That's what I did.

6 Q. On the next page, on page 5, you list  
7 Applicable Federal Motor Carrier Safety  
8 Regulations. And there's a handful of ones  
9 listed.

10:57:50AM

10 Are those the ones that you've relied  
11 upon in rendering your opinions in this case?

12 A. And I believe there are a few others,  
13 as I read through additional depositions, that I  
14 may have included.

10:58:10AM

15 Yes. There's at least a couple more  
16 that I've included as copies. They're copies in  
17 my file that I made and there may be more. I've  
18 got those marked in the FMCSRs on all the  
19 regulations I relied on.

10:58:25AM

20 Q. Terrific.

21 A. In other words, that's not all the  
22 regulations that I may have relied on.

23 Q. I understand.

10:58:33AM

24 If we turn to page 8 we have Utah CDL  
25 manuals. I presume you used the Utah manuals

1 because Kehler and Marks were licensed in Utah;  
2 is that true?

3 A. That's typically what I do. The  
4 manual -- I use the manual that the drivers  
10:58:47AM 5 involved would or may have studied before they  
6 got their CDL -- or to get their CDL.

7 Q. The FMCSRs are required regulations,  
8 correct? Meaning if you qualify as a motor  
9 carrier or someone underneath that, you are  
10:59:03AM 10 required to follow those regulations?

11 A. Applicable regulations, yes.

12 Q. Sure.

13 What about the Utah CDL manual; is it  
14 the same type of requirement standard?

10:59:14AM 15 A. No, sir.

16 Q. How would you describe it in your  
17 opinion?

18 A. I was just gonna do that.

19 CDL manuals, whether it's Wyoming or  
10:59:20AM 20 Utah, is a guide. Those rules and -- not  
21 regulations, but the information contained in  
22 those manuals are guides for individuals  
23 obtaining a commercial driver's license, whether  
24 they're gonna be operating a 10,000 pound truck  
10:59:37AM 25 or set of trouble trailers.

1           So it's overall guide of things to do  
2     for them to get their CDL. It's not a rule or  
3     regulation. Some may want to use it as that,  
4     but it's not.

10:59:48AM

5           Q. What about the PTDI trucking handbook  
6     that you cite on page 8? Is that more like the  
7     manuals or more like the regulations in terms of  
8     requirements?

11:00:04AM

9           A. It's more like the manuals to help  
10    drivers train to get a CDL. It's put in a  
11    little different format, but, again, it's  
12    guidelines on what drivers need to know to pass  
13    their test, both their skills and knowledge  
14    tests. So it's fairly similar.

11:00:23AM

15          Q. Does the information contained in the  
16    PTDI handbook reflect the transportation  
17    industry standards of care?

18          A. That's part of the standards of care  
19    that I'm referring to, yes.

11:00:33AM

20          Q. Okay.

21          A. So you have manuals, you've got the  
22    regulations, rules that -- applicable rules that  
23    need to be followed, you've got the CDL manuals  
24    that are guidelines.

11:00:42AM

25                 PTDI is another standard -- or

1 industry standard that helps you know what the  
2 regulations are. And all of that information,  
3 from the regulations to the state manuals to  
4 everything else, is the standards of care, so to  
5 speak, combination.

11:00:59AM

6 MR. KAPP: Off the record.

7 (An off-the-record discussion ensued.)

8 (Recessed from 11:01 a.m. to

9 11:13 a.m.)

11:14:45AM

10 BY MR. LIEBERMAN:

11 Q. Where we left off -- and I think we  
12 can probably sum it up with a sentence that you  
13 wrote, that "The FMCSRs contain minimum  
14 requirements for motor carriers and its employee  
15 drivers for compliance."

11:15:43AM

16 Is that your opinion?

17 A. Generally, yes.

18 Q. Then collectively the FMCSRs and the  
19 industry practices, known as industry standards,  
20 are there to help ensure highway safety,  
21 correct?

11:15:53AM

22 A. Correct.

23 Q. Next page. On page 9 we get into the  
24 section entitled Opinions and Discussion. And  
25 this is the onset of your opinions in this case;

11:16:06AM

1 isn't that correct?

2 A. Correct.

3 Q. Your first opinion is that both CLR,  
4 its employee drivers Kehler and Marks and FedEx  
11:16:22AM 5 were defined by the FMCSRs as for-hire motor  
6 carriers as they operated in interstate commerce  
7 and were required to comply with all applicable  
8 federal and state rules and regulations. Each  
9 motor carrier had duties and responsibilities to  
10 comply with applicable regulations.

11:16:37AM 10  
11 Did I read that correctly?

12 A. You did.

13 Q. Is that currently your opinion?

14 A. It is.

11:16:44AM 15 MR. FITZGERALD: I'm sorry. Where was  
16 that? What page was that?

17 MR. LIEBERMAN: That was page 9.

18 MR. FITZGERALD: Thank you.

19 BY MR. LIEBERMAN:

11:16:59AM 20 Q. I just want to talk about the specific  
21 FMCSRs that you are referencing here.

22 Are you familiar with FMCSR 390.5?

23 A. I am.

24 Q. That is the definition section for the  
11:17:16AM 25 regulations; is that correct?



1 A. It is.

2 Q. The regulations define an employee as  
3 including an independent contractor; isn't that  
4 correct?

11:17:25AM 5 A. That is correct.

6 Q. So in the context of the regulations,  
7 FedEx is the employer of CLR and its drivers; is  
8 that true?

9 MR. KAPP: Object to the form.

11:17:37AM 10 THE WITNESS: Yes. They are  
11 designated as an employer based on two  
12 definitions of whether they're an employer or an  
13 employee. So that's correct.

14 BY MR. LIEBERMAN:

11:17:45AM 15 Q. And the regulations designate Kehler  
16 and Marks as employees of FedEx?

17 MR. KAPP: Same objection.

18 BY MR. LIEBERMAN:

19 Q. Under the regulations.

11:17:54AM 20 A. Under the regulations.

21 MR. FITZGERALD: Under the  
22 regulations, the answer is?

23 THE WITNESS: Yes.

24 MR. LIEBERMAN: Thank you, Jim.

11:18:07AM 25 MR. KAPP: Was that a separate -- if

1 that was a separate question from Jim, then I  
2 have to object to it.

3 MR. FITZGERALD: The record was  
4 unclear.

11:18:15AM

5 MR. KAPP: Okay. Well, I object to  
6 the form of Jim's question too.

7 BY MR. LIEBERMAN:

8 Q. Under the regulations, Kehler and  
9 Marks are designated as employees of FedEx;  
10 isn't that correct?

11:18:26AM

11 MR. KAPP: Same objection.

12 THE WITNESS: Under the definition of  
13 employee under the Federal Motor Carrier Safety  
14 Regulations, yes.

11:18:32AM

15 BY MR. LIEBERMAN:

16 Q. In the same section you talk about  
17 FedEx's safety rating, is that a fair phrase?  
18 I'm looking at the last paragraph of Section 1.

19 A. It would be safety rating as well as  
11:19:04AM 20 other information that's contained in the FMCSR  
21 website.

22 Q. And I see you write, A review of  
23 FedEx's data 24 months before October 26, 2015,  
24 indicates FedEx violation and reportable crash  
11:19:19AM 25 frequency rates were well below or more

1 favorable than the national averages.

2 Did I read that right?

3 A. You did.

4 Q. Why did you include that in your  
5 report?

11:19:25AM

6 A. Because I always do an overview of the  
7 website, FMCSR website, to show whether or  
8 not -- or prove whether or not a motor carrier  
9 is a safe operating motor carrier based on  
10 information that's going to the FMCSA, such as  
11 roadside inspections and crashes and any audits  
12 that may have happened with regard to their  
13 safety rating.

11:19:41AM

14 Q. What factors go into a safety rating?

11:19:57AM

15 A. There are multiple factors that go  
16 into a rating based on the company's safety  
17 history, 383 -- or Part 383 Information, with  
18 regard to roadside inspections, crashes, if  
19 they -- do they have a safety -- not a  
20 measurement system, but do they have a safety  
21 operating system in place -- developed and in  
22 place and is it working.

11:20:19AM

23 So there are many factors that go into  
24 what the FMCSA uses to determine whether or not  
25 they're satisfactory or not.

11:20:31AM

1 Q. What other factors? What are the  
2 factors? Can you enumerate them?

3 A. Sure. Try to summarize this a little  
4 bit.

11:21:04AM

5 Q. Well, you're looking at the regulation  
6 handbook.

7 What specific reg are you looking at?

8 A. Part 385.

9 Q. Point anything or just 385?

11:21:12AM

10 A. Appendix A to Part 395 (sic), but I  
11 can basically go through the headings if you  
12 want, what contributes to a safe rating. That  
13 would be determining if the carrier has basic  
14 safety management controls. Number two, vehicle  
15 factor to see if they're maintaining their  
16 vehicles properly. Things to do with trucks,  
17 vehicles.

11:21:29AM

18 And, again, this is information coming  
19 from -- to them from roadside inspections. The  
20 accident factor has to do with how many  
21 accidents they've had in the past 24 months.  
22 That's both reportable and nonreportable -- or  
23 both preventable and nonpreventable.

11:21:42AM

24 Actually, that -- those two things  
25 combined, the management process and vehicle

11:22:07AM

1 factors and accident factor goes into a  
2 combination. That's how they determine whether  
3 or not they're rated satisfactory condition or  
4 nonconditional.

11:22:22AM

5 Q. With respect to FedEx, what safety  
6 management controls were considered?

11:22:35AM

7 A. Well, what would have been considered  
8 in their review, whenever that review  
9 happened -- I'd have to go to the report -- they  
10 would have reviewed whether or not they have too  
11 many crashes, for example, whether their basics  
12 are in place. That's vehicle factors, physical  
13 factors. And I can show you in the report what  
14 those are.

11:22:49AM

15 And vehicle factor, do they run  
16 vehicles that are not breaking down, being  
17 maintained properly, and how many crashes they  
18 have. That's what -- would have been the same  
19 various factors that I -- that any motor carrier  
20 would have been under to determine their safety  
21 rating.

11:23:08AM

22 Q. The safety rating is thus determined  
23 by the annual inspection reports and the number  
24 of crashes in a given year? I mean, is that  
25 essentially what you're telling me?

11:23:22AM

1 A. No. The FMCSR cites that they all  
2 deal with the past 24 months.

3 Q. So for the past two years.

4 So outside of the annual inspections  
5 and just a logging of your two-year accident  
6 rate, what else gets considered into this safety  
7 rating?

8 A. Whether or not roadside inspections  
9 are coming up with regard to vehicle hours of  
10 service. When they evaluate drivers, whether or  
11 not they are physically qualified. Everything  
12 that would happen on a roadside inspection.

13 In other words, if there are  
14 violations of the roadside inspections, that  
15 information would go to the primary carrier.  
16 You've got two carriers. You've got FedEx and  
17 you have CLR. That would go to FedEx for them  
18 to get with CLR, if it involves their employees,  
19 to get things corrected.

20 Q. In between the roadside inspections,  
21 there's no data that gets accumulated or  
22 tabulated in terms of calculating this rating,  
23 correct?

24 A. No. You will have any accidents, any  
25 DOT reportable accidents. That would be data

1 submitted by the states that would go into the  
2 database, so to speak.

3 And then when they come out -- or,  
4 actually, violations of drivers out of service  
11:24:43AM 5 and primarily roadside inspections and accident  
6 criteria. That would probably be close, yes.

7 Q. Data from drivers daily vehicle  
8 inspection reports is not included in this  
9 rating, correct?

11:24:57AM 10 A. No, it would be. Hours of service  
11 they -- well, no, just hours of service, I  
12 believe.

13 Q. In what way is hours of service  
14 considered?

11:25:08AM 15 A. Well, if they are stopped at a  
16 roadside inspection and if they're not  
17 completing their logbooks or over hours,  
18 including their vehicle inspections, they could  
19 be cited. That citation then goes into the  
11:25:23AM 20 database and sent to the primary motor carrier  
21 to get it taken care of.

22 So it would be included as a violation  
23 if they're not completing their daily vehicle  
24 inspection reports.

11:25:32AM 25 Q. Are the inspection reports audited or

1 reviewed in any capacity during the roadside  
2 inspection?

3 A. They would be -- yes. Most roadside  
4 inspections are coupled with the driver's daily  
11:25:51AM 5 logs. And they would look to see if they are  
6 completing their inspections. And I imagine if  
7 an inspector saw that there was an  
8 out-of-service issue with the truck, then he  
9 would investigate further to see if it got  
11:26:08AM 10 repaired before it continued moving.

11 Q. The investigator doesn't independently  
12 look at a specific vehicle inspection from six  
13 months ago, though, correct? He just looks to  
14 see if the data's there.

11:26:22AM 15 A. Well, they would go back the past  
16 seven days, if they were auditing a driver's  
17 hours of service. But keep in mind that most of  
18 these roadside inspections, if they're going  
19 through -- or doing investigation of this  
11:26:36AM 20 criteria, they will do an investigation of the  
21 vehicle itself as well.

22 Q. And all of that gets considered into  
23 the safety rating that you're talking about  
24 here?

11:26:45AM 25 A. Yes, the data is collected. For



1 example, if they do a vehicle inspection and  
2 there are various violations, let's say there's  
3 a violation of hours of service, there's a  
4 violation for cargo not being tied down  
5 properly, if there's a violation for a brake  
6 malfunction, that would be written up on a  
7 violation on a roadside inspection.

8 That inspection then goes into the  
9 database under the primary motor carrier, the  
10 carrier that has the numbers on the door, and  
11 that accumulates. And if too many of those  
12 accumulate, then that sends up a red flag or  
13 signal for them to possibly conduct an audit.

14 Q. How many contractors does FedEx lease?

15 A. Lease?

16 Q. Yes.

17 A. I don't know. I don't know.

18 Q. Do you know if it's more or less than  
19 the 5 to 8 percent Swift used to?

20 A. I don't know.

21 MR. KAPP: Object to the form.

22 If you know.

23 THE WITNESS: I don't know.

24 BY MR. LIEBERMAN:

25 Q. Do you know?

1 A. I have a sense it's more, but that's  
2 all.

3 Q. Do you know how many trucks CLR owns?

11:28:05AM

4 A. To my knowledge, it was a couple, as I  
5 recall.

6 Q. Is it fair to characterize a couple of  
7 trucks in the scheme of FedEx owner-operator  
8 trucks as fairly miniscule?

11:28:18AM

9 A. Two out of thousands of trucks maybe,  
10 yes.

11 Q. So the safety rating that you're  
12 listing in your opinions and discussions is an  
13 accumulation of all the tractors that FedEx  
14 either owns or leases and it operates, correct?

11:28:33AM

15 A. That's correct.

16 Q. So it's not independently verifiable  
17 to say this safety rating relates to CLR, for  
18 example, correct?

11:28:42AM

19 A. No. That is absolutely correct. We  
20 don't even know if CLR trucks are involved in  
21 any of the data, but I would always run that to  
22 show, first of all, whether or not they've got a  
23 satisfactory rating. And, number two, how they  
24 compare with other companies in the industry  
25 with regard to hours of service, vehicle

11:28:57AM

1 inspections, and other information.

2 Q. But the data provides you nothing with  
3 respect to what CLR was doing or not doing,  
4 correct?

11:29:10AM 5 A. Well, it may or may not. I don't know  
6 what's in the database.

7 Q. You didn't check it in this case?

8 A. No. I didn't run all hundreds of  
9 reports or however many there were. That's  
10 correct.

11:29:19AM 11 It gives you an overall aspect of how  
12 safe the company is compared to other motor  
13 carriers in the industry.

14 Q. In your first section, Opinion 1, you  
11:29:53AM 15 talk about how each motor carrier had duties and  
16 responsibilities to comply with applicable  
17 regulations, correct?

18 A. Correct.

19 Q. I want to talk about what some of  
11:30:01AM 20 those regulations may be.

21 Are you familiar with Regulation  
22 390.11?

23 A. Generally. Should I go to them?

24 MR. LIEBERMAN: No, let's mark it. I  
11:30:19AM 25 have copies.

1 (Deposition Exhibit No. 234 marked for  
2 identification.)

3 BY MR. LIEBERMAN:

4 Q. Sir, what I've marked as Exhibit 234  
5 is Regulation 390.11.

11:30:52AM

6 Are you familiar with this regulation?

7 A. I am.

8 Q. I can tell you that -- as you may be  
9 familiar -- I went on the appropriate website  
10 and printed out the regulations that were in  
11 effect as of the time of the crash.

11:31:06AM

12 Have you ever done that before?

13 A. Well, no, but I've gotten close.  
14 That's great.

15 Q. Thank you.

11:31:20AM

16 A. But these have been in place for many,  
17 years, but that's a good way to do it.

18 Q. Sure.

19 Some of them have changed from time to  
20 time. Generally speaking, I think the ones  
21 we're gonna talk about have been fairly, if not  
22 entirely, consistent over the years.

11:31:28AM

23 A. Correct.

24 Q. 390.11 states, "Whenever in Part 325  
25 of Subchapter A or in this subchapter a duty is

11:31:40AM

1 prescribed for a driver or a prohibition is  
2 imposed upon the driver, it shall be the duty of  
3 the motor carrier to require observance of such  
4 duties or prohibition. If the motor carrier is  
5 a driver, the driver shall likewise be bound."

11:31:51AM

6 Did I read that correctly?

7 A. You did.

8 Q. What is your understanding of what  
9 that means?

11:31:56AM

10 MR. KAPP: Object to the form.

11 THE WITNESS: What this tells me is  
12 that if you're a motor carrier, whether you  
13 transport commodities, intrastate or interstate,  
14 you are bound to follow the same regulations  
15 that your drivers are. This includes not only  
16 CLR, but also FedEx.

11:32:12AM

17 BY MR. LIEBERMAN:

18 Q. So if the regulations talk about  
19 safety, training, and maintenance, it is FedEx's  
20 responsibility to ensure that CLR and its  
21 drivers follow those regulations, correct?

11:32:24AM

22 MR. KAPP: Object to the form.

23 THE WITNESS: It's the responsibility  
24 of both motor carriers, FedEx as well as CLR, to  
25 ensure their drivers are in compliance with the

11:32:36AM

1 regulations. And they have to follow those same  
2 rules.

3 So you've got two motor carriers in  
4 this case, CLR as well as FedEx.

11:33:08AM

5 MR. KAPP: Off the record.

6 (An off-the-record discussion ensued.)

7 BY MR. LIEBERMAN:

8 Q. Is FedEx responsible for compliance  
9 under the FMCSRs by CLR?

11:33:50AM

10 MR. KAPP: Object to the form.

11 THE WITNESS: Well, possibly to answer  
12 your question. Both carriers are responsible,  
13 CLR as well as FedEx. FedEx, being the primary  
14 carrier, will audit logs, but CLR is responsible  
15 to make sure their drivers are submitting logs  
16 as well as in compliance with the regulations.

11:34:04AM

17 BY MR. LIEBERMAN:

18 Q. My question is a bit more pointed than  
19 that.

11:34:11AM

20 Is FedEx responsible for CLR's  
21 compliance under the regulations?

22 MR. KAPP: Same objection.

23 THE WITNESS: The best way to answer  
24 that is FedEx is, under the regulations,  
25 responsible to make sure that CLR is in

11:34:31AM

1 compliance with the regulations.

2 BY MR. LIEBERMAN:

3 Q. Can that responsibility be  
4 transferred?

11:34:45AM

5 MR. KAPP: Same objection.

6 BY MR. LIEBERMAN:

7 Q. Can FedEx transfer the responsibility  
8 that it has over CLR and the drivers to any  
9 other entity?

11:34:52AM

10 MR. KAPP: Same objection.

11 THE WITNESS: Not under another motor  
12 carrier. You've only got two motor carriers  
13 involved in this and they can't transfer it to  
14 Jim's Trucking somewhere, that's correct.

11:35:37AM

15 BY MR. LIEBERMAN:

16 Q. Are motor carriers liable for the  
17 actions of their employees even though the  
18 carrier contends that it did not require or  
19 permit violations to occur?

11:35:47AM

20 MR. KAPP: Object to the form.

21 THE WITNESS: Let's go through that  
22 question one more time.

23 BY MR. LIEBERMAN:

24 Q. Are carriers liable for the actions of  
25 their employees even though the carrier contends

11:35:56AM

1 that it did not require or permit the violations  
2 to occur?

3 MR. KAPP: Object to the form.

11:36:08AM

4 THE WITNESS: I think that's maybe a  
5 legal terminology. It's possible. I don't  
6 recall reading that in any of the regulations.

7 (Deposition Exhibit No. 235 marked for  
8 identification.)

9 BY MR. LIEBERMAN:

11:36:32AM

10 Q. What I've marked as Exhibit 235 is a  
11 printout from the Federal Motor Carrier Safety  
12 Administration website. It is the comments and  
13 guidelines that you reference in your own report  
14 for the regulations.

11:36:47AM

15 Are you familiar with this?

16 A. I am.

17 Q. I'd like you to turn on the second  
18 page to Question 8. You can review the whole  
19 document. I don't want to stop you from doing  
20 that, but my question is going to be pointed at  
21 Question 8.

11:36:58AM

22 A. Okay. Question 8.

23 Q. Question 8 on page 2 of this document.  
24 I'll read the question.

11:37:10AM

25 Question 8: "Are carriers liable for



1 the actions of their employees even though the  
2 carrier contends that it did not require or  
3 permit the violations to occur?"

11:37:20AM

4 Can you read into the record what the  
5 guidance says, please.

6 MR. KAPP: Okay. And I need to object  
7 to the form of the question.

11:37:36AM

8 Also, this witness isn't being offered  
9 to offer legal conclusions. Counsel is aware of  
10 the stipulation that FedEx offered last month  
11 regarding CLR.

11:37:55AM

12 It appears that FedEx is just gonna  
13 have to file it with the Court because  
14 plaintiffs don't seem to be willing to accept  
15 it, but it's irrelevant to the case given the  
16 stipulation.

17 MR. FITZGERALD: Well, I move to  
18 strike all that.

11:38:06AM

19 MR. LIEBERMAN: Move to strike that as  
20 well. Objection noted.

21 BY MR. LIEBERMAN:

22 Q. Sir, can you read into the record the  
23 guidance response to Question 8 I read, please.

24 A. "Yes" --

11:38:15AM

25 MR. KAPP: Same objections.

1 THE WITNESS: "Carriers are liable for  
2 the actions of their employees. Neither intent  
3 to commit, nor actual knowledge of a violation  
4 is a necessary element of that liability.

11:38:26AM

5 Carrier's permit violations of the hours of  
6 service regulations by their employees if they  
7 fail to have in place management systems that  
8 effectively prevent such violations."

9 BY MR. LIEBERMAN:

11:38:41AM

10 Q. Did you understand what you just read?

11 A. I did.

12 Q. Does this effectively incentivize a  
13 motor carrier such as FedEx to have in place  
14 management systems to oversee CLR?

11:38:50AM

15 MR. KAPP: Same objections.

16 THE WITNESS: Yes. And that's just  
17 what we were talking about a few minutes ago  
18 with regard to FedEx FMCSR guidelines. Their  
19 management system is effective. They've got a  
20 satisfactory rating. So they do have a safety  
21 management system in place per the FMCSA.

11:39:04AM

22 BY MR. LIEBERMAN:

23 Q. What safety management program are you  
24 referring to with respect to FedEx?

11:39:14AM

25 A. The safety management system we

1 discussed in 385 a few minutes ago in the  
2 regulations where a company has to have  
3 management controls to monitor and guide drivers  
4 under their authority to cause that they have  
5 maintenance completed, they cause that they have  
6 hours-of-service audits, that they're in  
7 compliance with the hours of service, and they  
8 prevent crashes. That's the purpose of  
9 reviewing motor carrier by the FMCSA.

11:39:33AM

10 Q. I understand the purpose. My question  
11 was more pointed than that.

11:39:50AM

12 What did FedEx have with respect to a  
13 management system?

14 MR. KAPP: Same objections.

11:40:02AM

15 BY MR. LIEBERMAN:

16 Q. I'm not asking for generally speaking.  
17 I'm asking for specifically.

18 What did FedEx have as a management  
19 system to ensure CLR complied with the  
20 regulations?

11:40:11AM

21 MR. KAPP: Same objections.

22 THE WITNESS: Let me go to the FMCS  
23 website. I can explain that a little better to  
24 you.

11:40:18AM

25 BY MR. LIEBERMAN:

1 Q. How can the FMCS website explain to me  
2 what FedEx had by way of a management system?

3 A. Because we can look through their  
4 history as far as their safety measurement  
11:40:31AM 5 system to find out how they rate with other  
6 companies.

7 Q. I'm not interested in their safety at  
8 all.

9 I'm asking if you know -- perhaps you  
11:40:35AM 10 don't -- specifically what safety management  
11 system did FedEx have to ensure CLR's compliance  
12 with the regulations?

13 MR. KAPP: Same objections.

14 THE WITNESS: I specifically don't  
11:40:44AM 15 know, except when they provide contractors with  
16 their rules and regulations you can tell they've  
17 got safety management systems in place with  
18 regard to employment, citations that they have,  
19 you can't have accidents.

11:40:57AM 20 And there's a list of those topics, I  
21 think, in Addendum 10 of the agreement. That is  
22 kind of the guts of their safety management  
23 system on things that a driver can or can't do.  
24 That's probably the best way I can explain that  
11:41:13AM 25 to you.

1 BY MR. LIEBERMAN:

2 Q. So your understanding, the safety  
3 management system to ensure compliance with the  
4 regulations by FedEx is encapsulated within  
5 Addendum 10 of the lease contract?

11:41:24AM

6 A. No. I'm saying that's part of it.

7 Q. Well, what's the other parts?

8 A. The other part is a system in place  
9 that shows, okay, when we hire a driver, for  
10 example -- here's part of the management  
11 system -- you have to obviously comply with the  
12 regulations on the first eight or so  
13 requirements, but those are minimum standards  
14 we've talked about earlier.

11:41:37AM

15 What do you have in place in addition  
16 to that to hire? What do you have in addition  
17 to drug and alcohol testing? What do you have  
18 in addition to accidents, for example? How many  
19 accidents can a driver not have during a period  
20 of time. That is all part of the safety  
21 management system.

11:41:47AM

22 MR. KAPP: And I failed to get my  
23 objection out before the witness started to  
24 answer but, again, object to the form.

11:42:04AM

25 Keep going.

11:42:12AM

1 THE WITNESS: I'm kind of done with  
2 that part.

3 BY MR. LIEBERMAN:

4 Q. Well, let's look at Addendum 10.

11:42:20AM

5 (Deposition Exhibit No. 236 marked for  
6 identification.)

7 Q. What I've marked as Exhibit 236 is  
8 Addendum 10, as you reference, which is part of  
9 the FedEx safety management system as you  
10 describe it.

11:42:45AM

11 Can you show me where in Addendum 10  
12 you were referring?

13 MR. KAPP: Object to the form.

14 THE WITNESS: Sure. Let's just start  
15 off here. I guess the entire portion, Driver  
16 Qualification Criteria.

11:42:53AM

17 BY MR. LIEBERMAN:

18 Q. Okay.

19 A. They have a criteria before they can  
20 put a driver on as either a company driver or a  
21 contract driver.

11:43:06AM

22 Q. Okay.

23 A. New Driver Qualification Criteria:  
24 What causing the accident means. What is an  
25 accident. How many accidents the driver can

11:43:25AM

1 have.

2 Current Driver Qualification Criteria:  
3 Controlled substance and alcohol offenses,  
4 unsafe driving offenses.

11:43:37AM

5 They have this in the agreement for  
6 contractors to say here's what our safety  
7 procedures are. That is part of their safety  
8 management criteria.

9 What are unsafe driving offenses.

11:43:55AM

10 Compliance with regulatory authority  
11 or contract. They're telling CLR, their  
12 drivers, they've got to comply with the DOT  
13 regulations that are applicable.

14 They've got an unauthorized passenger  
15 program in place, which many companies do.  
16 That's in addition to.

11:44:17AM

17 Background qualification criteria,  
18 training responsibilities, safety  
19 responsibilities.

11:44:34AM

20 This is a pretty good overview of a  
21 safety management process that FedEx would have.

22 Q. Would you expect to see an actual  
23 safety manual?

24 MR. KAPP: Object. You're saying for  
25 contract drivers?

11:44:48AM

1 MR. LIEBERMAN: Sure.

2 MR. KAPP: And it's my understanding  
3 FedEx Ground, that's what it is is contract  
4 drivers, but, in any case, object to the form,  
11:44:58AM 5 foundation, calls for speculation.

6 THE WITNESS: There is a safety manual  
7 that they provide.

8 BY MR. LIEBERMAN:

9 Q. FedEx provides safety manuals to  
11:45:08AM 10 contract drivers?

11 A. Yes.

12 Q. You've seen this?

13 A. Yes. I reviewed that the other day.

14 Q. What year is that dated?

11:45:19AM 15 A. I've got it in my report. I don't  
16 know what year it's dated. It's a small manual  
17 that goes over various aspects, primarily  
18 operational things. I forgot what the name of  
19 it's called.

11:45:29AM 20 Q. Do you know if it was provided to  
21 Kehler or Marks?

22 A. I don't know.

23 Q. Do you know if it was provided to CLR?

24 A. I don't know if it was.

11:45:41AM 25 Q. Going back to Addendum 10. What does



1 FedEx do to ensure that CLR follows its  
2 contractual language outlined in Addendum 10?

3 MR. KAPP: Object to the form.

4 THE WITNESS: Well, I don't know if  
11:46:02AM 5 you can ensure anything, first of all. The  
6 regulations don't require FedEx or motor  
7 carriers to ensure the regulations that have  
8 them to cause to make sure they're in compliance  
9 with the regulations.

11:46:20AM 10 BY MR. LIEBERMAN:

11 Q. Perhaps we're just talking semantics  
12 but, again, 290.11 says if there's a duty  
13 prescribed for a driver or a prohibition is  
14 imposed upon a driver, it shall be the duty of  
11:46:28AM 15 the motor carrier to require observance.

16 A. Correct.

17 MR. KAPP: Same objection.

18 BY MR. LIEBERMAN:

19 Q. So that's where I'm pulling my  
11:46:34AM 20 language from from the regulations.

21 A. Okay. That is both --

22 MR. KAPP: Same objection.

23 Hold on. You guys need to breathe a  
24 little bit before you question and before you  
11:46:42AM 25 answer.

1 MR. FITZGERALD: I think the witness  
2 was just interrupted by counsel.

3 MR. LIEBERMAN: I agree.

4 MR. KAPP: Yeah. And that will --  
11:46:49AM 5 yeah. If I can't -- if the witness doesn't give  
6 me enough time to make my objection, that's  
7 gonna happen a lot. That's why I was making  
8 that suggestion.

9 THE WITNESS: FedEx -- both FedEx and  
11:47:02AM 10 CLR are responsible as motor carriers to  
11 comply -- have their employees comply with the  
12 regulations. They both have a duty.

13 BY MR. LIEBERMAN:

14 Q. All right. And the employees in this  
11:47:09AM 15 case for both FedEx and CLR under the  
16 regulations are Kehler and Marks?

17 MR. KAPP: Object to the form.

18 THE WITNESS: Well, the term  
19 "employees" under the regulations -- because  
11:47:18AM 20 FedEx has their number on the door, they're  
21 classified as employees. But we all know  
22 they're not employees based on employee/employer  
23 relationship.

24 That's why CLR, as a motor carrier,  
11:47:30AM 25 still has an obligation to make sure their

1 employees comply with the regulations as well.

2 BY MR. LIEBERMAN:

3 Q. You testified earlier -- and it's in  
4 your report -- that the regulations are  
5 requirements, correct?

11:47:37AM

6 A. Correct.

7 Q. So it doesn't matter what a party may  
8 contract with outside of the regulations,  
9 correct?

11:47:43AM

10 MR. KAPP: Object to the form.

11 THE WITNESS: Well, it does in the  
12 sense that the FMCSRs on Part 371, I believe,  
13 has certain agreements they can put together  
14 with the contractor. There are certain  
15 requirements they've got to follow.

11:47:56AM

16 BY MR. LIEBERMAN:

17 Q. And that's in an additional section in  
18 your report. What I'm talking about is FedEx  
19 cannot contract with CLR to absolve its  
20 responsibilities under the regulations, correct?

11:48:06AM

21 MR. KAPP: Object to the form.

22 THE WITNESS: Correct.

23 BY MR. LIEBERMAN:

24 Q. And so my question -- again, with that  
25 in mind -- is what does FedEx do to ensure that

11:48:13AM

1 CLR follows the items in Addendum 10 to the  
2 contract, if you know?

3 MR. KAPP: Same objection. It's been  
4 asked and answered.

11:48:26AM

5 THE WITNESS: We can go through this  
6 again. First of all -- and probably the best  
7 way to do it is go through the driver  
8 qualification criteria.

11:48:35AM

9 They screen their -- they screen the  
10 contractor drivers. They make sure they're in  
11 compliance with the driver file that's required.  
12 They make sure they're set up to monitor any  
13 roadside inspections; accidents, if they have  
14 those issues; see if their physical's going to  
15 expire. They ask for their logs, okay, to do  
16 periodic audits or however they audit their  
17 logs.

11:48:53AM

18 And that is the safety management  
19 process they have in place. That is the  
20 process.

11:49:05AM

21 BY MR. LIEBERMAN:

22 Q. Does FedEx audit the driver logs?

23 A. I don't know. I think they do. I  
24 recall that some -- a clerk at the terminals  
25 will do some kind of audit of the logs. And,

11:49:14AM

1 again, that goes back to their e-log system  
2 where they can probably just run reports.

3 If the e-logs says there's violations,  
4 then they get with the contractor and they make  
11:49:27AM 5 sure that the contractor solves the problem or  
6 if he doesn't, he doesn't have the driver or  
7 eventually the truck is pulled from the lease.

8 Q. Do you know if FedEx does any of the  
9 items you just described?

11:49:38AM 10 MR. KAPP: Object to the form.

11 BY MR. LIEBERMAN:

12 Q. And, if so, where are you getting that  
13 information?

14 MR. KAPP: Object to the form.

11:49:41AM 15 THE WITNESS: I saw that in the driver  
16 file. The driver files are good files, and it  
17 appears they followed their guidelines in the  
18 addendum, based on looking at Kehler and Marks'  
19 driver files.

11:49:56AM 20 BY MR. LIEBERMAN:

21 Q. So your opinion that FedEx ensures  
22 that CLR follows the items in Addendum 10 is  
23 based strictly on looking at the driver files  
24 for Kehler and Marks?

11:50:05AM 25 A. No, sir.

1 MR. KAPP: Object to form.

2 BY MR. LIEBERMAN:

3 Q. What else is it based upon?

11:50:10AM

4 A. In addition, they know they're under  
5 e-logs. There's been testimony that they audit  
6 logs and they look at the logs.

7 Q. Who testified to that?

11:50:26AM

8 A. I believe that was the Salt Lake  
9 terminal manager where they go through -- they  
10 go through logs, as well as they have a truck  
11 file maintenance. That's how they monitor their  
12 contractors.

11:50:40AM

13 Q. Do you know if they audit the truck  
14 file to ensure that proper maintenance is being  
15 completed?

16 A. Well, I don't know what you mean by  
17 audit.

18 Q. Look at it. Anything more than just  
19 putting it in a file.

11:50:48AM

20 MR. KAPP: Now you're starting to  
21 argue with this witness.

22 MR. LIEBERMAN: He asked me.

23 MR. KAPP: Object to the form.

24 THE WITNESS: I don't know.

11:50:55AM

25 Somebody's got to pass through a document before

1 they can put it in the file and look at it, I  
2 would imagine.

3 BY MR. LIEBERMAN:

4 Q. I understand what you imagine, and I  
11:51:02AM 5 don't mean to interrupt you and I am not  
6 attempting to be argumentative. What I want to  
7 get today is what you know and what you have an  
8 opinion on.

9 And so I want to know if you know if  
11:51:11AM 10 FedEx does anything to audit the driver files?

11 MR. KAPP: Asked and answered. Object  
12 to the form.

13 THE WITNESS: The driver files.

14 BY MR. LIEBERMAN:

11:51:19AM 15 Q. Sure. One, the driver files?

16 MR. FITZGERALD: I think you mean the  
17 driver qualification file.

18 MR. LIEBERMAN: Thank you.

19 BY MR. LIEBERMAN:

11:51:26AM 20 Q. The driver qualification file.

21 A. I don't know. Based on looking at the  
22 file, it appears to be in order.

23 Q. Do you know if FedEx does anything to  
24 review the monthly maintenance reports?

11:51:38AM 25 A. I don't know other than based on

1 testimony they have truck files and they have  
2 monthly reports that the contractor is to be  
3 completed -- or is to complete, and they submit  
4 their maintenance receipts.

11:51:51AM

5 Q. Does FedEx have a similar structure in  
6 oversight that Swift does such as a driver  
7 manager?

8 A. I don't know if they do. I don't know  
9 their structure like I know Swift's structure.

11:52:12AM

10 Q. Is that something you'd like to know?

11 MR. KAPP: Object to the form.

12 BY MR. LIEBERMAN:

13 Q. Would it be helpful in rendering your  
14 opinions in this case?

11:52:21AM

15 A. It may.

16 Q. Back to the requirements under the  
17 regulations.

18 Are you familiar with Regulation  
19 396.3?

11:52:58AM

20 A. I'm sure I probably am. Let's take a  
21 look at it.

22 (Deposition Exhibit No. 237 marked for  
23 identification.)

24 BY MR. LIEBERMAN:

11:53:18AM

25 Q. I'm going to read into the record



1 directly from 396.3(a).

2 General. Every motor carrier in  
3 intermodal equipment provider must  
4 systematically inspect, repair, and maintain or  
5 cause to be systematically inspected, repaired,  
6 and maintained, all motor vehicles and  
7 intermodal equipment subject to its control.

8 Did I read that correctly?

9 A. You did.

10 Q. Under this provision, it is FedEx's  
11 responsibility to ensure that the tractor at  
12 issue is systematically inspected, repaired, and  
13 maintained, true?

14 A. Systematically inspected, repaired and  
15 maintained. Caused to be systematically  
16 repaired, that's correct.

17 Q. What did FedEx do to satisfy this  
18 regulation?

19 A. They set up in their maintenance  
20 procedures -- and probably their safety  
21 procedures -- a process where the contractors  
22 complete a monthly form of the repairs done on  
23 their owned tractor equipment and submit the  
24 receipts -- the repair receipts that would be in  
25 their truck file.

1 Q. Other than collecting those monthly  
2 maintenance reports and putting them in a file,  
3 what did FedEx do?

4 A. I'm not sure, other than cause to be  
11:54:39AM 5 systematically inspected, repaired, and  
6 maintained.

7 Q. How did FedEx do it?

8 MR. KAPP: Object to the form. It's  
9 been asked and answered.

11:54:54AM 10 THE WITNESS: They required the  
11 contractor to complete their monthly inspection  
12 form and submit all of the repairs for that  
13 period or that month to FedEx company.

14 BY MR. LIEBERMAN:

11:55:12AM 15 Q. I understand what they required. What  
16 I'm asking is how did FedEx ensure compliance  
17 with 396.3?

18 MR. KAPP: Same objection. It's been  
19 asked and answered.

11:55:21AM 20 THE WITNESS: Well, again, as far as  
21 396.3, the general rule says that they must  
22 cause or be systematically inspected. They may  
23 cause to have that done.

24 Cause means you fill out a form. The  
11:55:35AM 25 cause means you submit your receipts. And

1 contractor, you're the one doing the work on the  
2 equipment. That's how they caused that to be  
3 done.

4 BY MR. LIEBERMAN:

11:55:49AM

5 Q. More specifically -- correct me if I'm  
6 wrong -- what you're stating is that FedEx  
7 caused compliance by contracting with CLR?

11:56:10AM

8 A. No. They caused their equipment to be  
9 systematically repaired -- inspected, repaired,  
10 and maintained by having a file on the truck or  
11 trucks and have them submit their repairs that  
12 were being done during the month as well as the  
13 receipts of repairs from dealerships or  
14 whatever.

11:56:25AM

15 Q. Did FedEx ever look at those monthly  
16 maintenance records?

17 MR. KAPP: Object to the form. This  
18 question has been asked about six times now.

19 Asked and answered. Object to the  
20 form.

11:56:35AM

21 THE WITNESS: I don't know who looked  
22 at the forms. I don't know.

23 BY MR. LIEBERMAN:

24 Q. So they could be inaccurate?

11:56:41AM

25 MR. KAPP: Object to the form.

1 THE WITNESS: What could be  
2 inaccurate?

3 BY MR. LIEBERMAN:

4 Q. The records.

11:56:49AM

5 MR. KAPP: Same objection.

6 THE WITNESS: Well, if they submitted  
7 a receipt or an invoice, for example, of repairs  
8 done at a qualified shop with payment included  
9 with the details of repairs, I guess someone  
10 could have made all that up, but it's highly  
11 unlikely.

11:57:06AM

12 MR. KAPP: Counsel, for the record,  
13 this whole discussion is irrelevant. Neither of  
14 your experts in this case have found fault with  
15 compliance with the reporting requirements.

11:57:21AM

16 This is a totally irrelevant discussion.

17 MR. FITZGERALD: We crossed those  
18 experts with your people. So it's entirely  
19 appropriate to go into this topic.

11:57:36AM

20 MR. LIEBERMAN: Let's mark this as the  
21 next exhibit.

22 (Deposition Exhibit No. 238 marked for  
23 identification.)

24 BY MR. LIEBERMAN:

11:58:00AM

25 Q. Sir, what I've marked as Exhibit 238

1 is a monthly maintenance record.

2 Have you seen this document before?

3 A. Yes. This is the FedEx sheet, monthly  
4 maintenance record we've been discussing for  
11:58:11AM 5 quite some time.

6 Q. Sure. This was submitted by CLR  
7 Transportation on October 15, 2014.

8 Do you see that?

9 A. That's correct.

11:58:18AM 10 Q. And it references a maintenance record  
11 for the month and year of September of 2014.

12 Do you see that?

13 A. Yes.

14 Q. Just under those box sections there's  
11:58:31AM 15 a question. "Were any repairs, inspections, or  
16 preventative maintenance performed on this  
17 vehicle?"

18 And the box checked says?

19 A. Says no.

11:58:39AM 20 MR. LIEBERMAN: Okay. Let's mark as  
21 Exhibit 239.

22 (Deposition Exhibit No. 239 marked for  
23 identification.)

24 BY MR. LIEBERMAN:

11:59:02AM 25 Q. According to the monthly maintenance

1 records submitted and signed by Chris Rodrick on  
2 behalf of CLR, there was no monthly maintenance  
3 performed in the month of September on  
4 Vehicle 125417; is that correct?

11:59:15AM

5 A. That's how it's marked.

6 Q. What I've marked as Exhibit 239 -- and  
7 you can peruse them. It's a collection of  
8 record that was disclosed by FedEx and CLR for  
9 service and maintenance performed on

11:59:31AM

10 Unit No. 125417 for the month of September of  
11 2014.

12 Do you see that?

13 A. Correct.

14 Q. So needless to say, the monthly  
15 maintenance record marked as Exhibit 238 is  
16 wrong, right?

11:59:39AM

17 MR. KAPP: Object to the form.

18 THE WITNESS: It's marked as no,  
19 incorrect.

11:59:47AM

20 BY MR. LIEBERMAN:

21 Q. Right. It's incorrectly marked?

22 A. Correct.

23 Q. Right. And so we have evidence in  
24 this case of CLR reporting no maintenance being  
25 reported while maintenance was, in fact,

11:59:57AM

1 performed in the month of September, correct?

2 MR. KAPP: And that's a bad thing?

3 I'm sorry. Strike that.

4 Object to the form.

12:00:07PM

5 THE WITNESS: The form is marked no,  
6 but they did submit their monthly maintenance  
7 records as required by FedEx.

8 BY MR. LIEBERMAN:

12:00:17PM

9 Q. How do you know they submitted their  
10 monthly maintenance records?

11 A. Because I'm looking at them.

12 Q. Well, I handed you a copy of them, but  
13 how do you know they were actually submitted to  
14 FedEx?

12:00:24PM

15 MR. KAPP: Object to the form.

16 THE WITNESS: I guess I don't know  
17 that.

18 BY MR. LIEBERMAN:

19 Q. Speculating?

12:00:27PM

20 MR. KAPP: Object to the form.

21 THE WITNESS: I do know it was done on  
22 9/10 of '14.

23 BY MR. LIEBERMAN:

24 Q. That's one record in the collection.

12:00:36PM

25 A. Correct.

1 Q. Does Swift monitor the accuracy of  
2 these monthly maintenance records?

3 MR. KAPP: Object to form.

4 THE WITNESS: I don't know if we have  
5 monthly maintenance records like that. I don't  
6 know how they're set up.

7 BY MR. LIEBERMAN:

8 Q. During your tenure you don't know how  
9 the monthly maintenance records are set up with  
10 Swift --

11 A. It appears --

12 Q. -- for 30 years.

13 A. I wish.

14 It appears that the monthly  
15 maintenance record that we talked about in  
16 Exhibit 238 has a box checked that's a  
17 computerized yes or no. It's not a handwritten  
18 situation.

19 So I don't know how that got there.

20 They got the records before they marked that. I  
21 don't know. It's a computerized issue.

22 Q. Do you know if FedEx did anything to  
23 review this particular monthly maintenance  
24 record as it was received?

25 MR. KAPP: Object to the form.



1 THE WITNESS: Are you referring to  
2 which one?

3 BY MR. LIEBERMAN:

4 Q. 238, sir.

12:01:50PM

5 A. Oh, I don't know. All I know is it's  
6 part of their monthly reporting record.

7 Q. Do you know how FedEx actually  
8 maintains those records?

9 MR. KAPP: Object to the form.

12:02:09PM

10 THE WITNESS: Only from, I believe,  
11 the terminal manager in Salt Lake's deposition.  
12 They have a truck file, as I recall him  
13 testifying about.

14 BY MR. LIEBERMAN:

12:02:37PM

15 Q. Is a motor carrier solely responsible  
16 for ensuring that the vehicle is under its  
17 control and in safe operating condition?

18 MR. KAPP: Object to the form.

19 THE WITNESS: They could be. Sounds  
12:02:49PM 20 about right, which is both motor carriers in  
21 this case.

22 (Deposition Exhibit No. 240 marked for  
23 identification.)

24 BY MR. LIEBERMAN:

12:03:17PM

25 Q. Sir, what I've marked as Exhibit 240,

1 again, is the Federal Motor Carrier Safety  
2 Administration guideline, which you comment on  
3 in your report to Part 396. I want to direct  
4 your attention to Question 3. For the record,  
12:03:29PM 5 I'm going to read in the question and you can  
6 read in the guidance.

7 Question 3: "Who has the  
8 responsibility of inspecting and maintaining  
9 leased vehicles and their maintenance records?"

10 The guidance says?

11 A. This is guidance. "The motor carrier  
12 must either inspect, repair, maintain, and keep  
13 suitable records for all vehicles subject to its  
14 control for 30 consecutive days or more or cause  
12:03:39PM 15 another party to perform such activities."

16 Q. You stopped short of finishing it.

17 A. "The motor carrier is solely  
18 responsible for ensuring that the vehicles under  
19 its control are in safe operating condition and  
12:03:52PM 20 that defects have been corrected."

21 Q. And that would apply to both FedEx and  
22 CLR in this case, correct?

23 A. Correct.

24 Q. What did FedEx do to ensure that the  
12:04:06PM 25 vehicles under its control, such as the subject  
12:04:15PM

1 tractor, were in safe operating condition?

2 A. Well, based on Question 1 of the  
3 regulations, they set up a systematic means of a  
4 regular or scheduled program to keep vehicles in  
5 safe operating condition.

12:04:30PM

6 That's back to the systematic process  
7 of setting up a method to make sure that these  
8 vehicles are being repaired.

9 Q. And where can I find that systematic  
10 program?

12:04:43PM

11 A. Well, I don't know if there's a  
12 systematic program. The program just says that  
13 a systematic inspection, repair, and maintenance  
14 program needs to be developed. And it appears  
15 to me that one was developed by FedEx by  
16 requiring each of the contractors to submit  
17 documents and maintenance reports and invoices,  
18 receipts, whatever, to be put in their truck  
19 file -- reviewed and put in their truck file on  
20 a regular basis.

12:04:53PM

21 Q. Outside of maintaining that file, do  
22 you know of any other program that FedEx  
23 instituted to ensure the safe operating  
24 condition of the subject tractor?

12:05:15PM

25 A. I know of no other program. That's a

12:05:29PM

1 program that's typically used in the industry  
2 for contractors' vehicles.

3 Q. Well, that's not the program Swift  
4 used?

12:05:37PM

5 A. Generally is.

6 Q. Well, Swift had driver managers that  
7 oversaw the maintenance. We went over that for  
8 hours at the beginning of this deposition.

12:05:47PM

9 A. I don't know what FedEx has to review  
10 that. It could be a manager, it could be a  
11 safety guy, it could be a compliance person.

12 Q. You don't know?

13 A. I don't know.

12:06:11PM

14 MR. FITZGERALD: Would you please read  
15 me the last answer.

16 (The record was read by the reporter  
17 as follows:

12:05:48PM

18 "I don't know what FedEx  
19 has to review that. It could  
20 be a manager, it could be a  
21 safety guy, it could be a  
22 compliance person.")

23 BY MR. LIEBERMAN:

12:07:06PM

24 Q. What did CLR do, if anything, to  
25 ensure that the tractor was properly maintained?

1           A. It's my opinion -- again, based on  
2 reviewing depositions and information -- that  
3 they had Kehler as the lead driver on this  
4 truck, probably the lead driver designated by  
5 FedEx.

12:07:27PM

6           Chris, to my knowledge, never refused  
7 to have his equipment repaired. Kehler would --  
8 seemed like the person to take the equipment in.  
9 I don't know if Chris contacted shops to have it  
10 taken in or how that worked.

12:07:49PM

11           I don't know the transaction there,  
12 but I do know that we had about three shops,  
13 Sapp Brothers, Warner, and I forget that other  
14 one, that they used on a regular basis in Salt  
15 Lake to repair their equipment. In fact, the  
16 mechanics even went to the FedEx site to pick  
17 the truck up to take it to the shop and bring it  
18 back.

12:08:07PM

19           And I had -- from my perspective, that  
20 is their maintenance group. They had two or  
21 three different qualified shops repair their  
22 trucks, even pick them up at the yard.

12:08:23PM

23           Q. Did CLR have any written policies or  
24 procedures on maintenance?

25           A. I've seen none, no.

12:08:34PM

1 Q. Should they?

2 MR. KAPP: Object to the form.

3 THE WITNESS: I don't know. It was --  
4 they've only got a couple trucks. I don't know  
12:08:44PM 5 if they should, but they had a lead driver with  
6 20-plus years experience on the truck.

7 BY MR. LIEBERMAN:

8 Q. What is the number of trucks that you  
9 would expect a trucking company to have  
12:08:54PM 10 whereupon they should have a written policy with  
11 respect to maintenance?

12 MR. KAPP: Object to the form.

13 THE WITNESS: With respect to  
14 maintenance?

12:09:01PM 15 BY MR. LIEBERMAN:

16 Q. Yeah.

17 A. First of all, I think there should be  
18 written policies if -- like, for example, Swift  
19 had their own shops to tell drivers when to take  
12:09:12PM 20 trucks in or how they would communicate with  
21 getting their trucks repaired.

22 In this particular case, you don't  
23 have a company-owned shop or group. They use  
24 outside vendors. So generally what happens with  
12:09:25PM 25 contractors when they need something fixed or

1 repaired or generally a B service, which many  
2 things are checked to be repaired, they'll take  
3 it into one of the shops.

4 Q. I understand.

12:09:35PM

5 What I'm saying is at what point in  
6 the growth of a company would you expect a  
7 trucking company to have policies -- written  
8 policies and procedures regarding maintenance of  
9 their trucks?

12:09:46PM

10 MR. KAPP: Object to the form.

11 THE WITNESS: I don't know. 5, 10, 15  
12 trucks. I don't know. I can't remember that  
13 far back. We set one up with 150 trucks, so  
14 maybe that's the number. I'm not sure.

12:10:01PM

15 The idea is when you have your own  
16 shops, that's when you really need written  
17 information on informing drivers how they  
18 interact with those shops -- company-owned shops  
19 to get their trucks fixed, particularly  
20 employees that they don't own the truck. It's  
21 not their truck. It's the company's truck.

12:10:15PM

22 So how do they interact with this to  
23 get their company's truck done. Contractors  
24 trucks are owned, operated by the contractor.

12:10:31PM

25 FedEx doesn't get it repaired. They don't pay

1 for fuel. They have those repairs done by the  
2 contractor.

3 BY MR. LIEBERMAN:

12:10:40PM

4 Q. FedEx is hands off in that regard,  
5 correct?

12:10:51PM

6 A. In that regard, yes, not only by  
7 contract, but that's how it works. But they  
8 have to, based on what we talked about, have a  
9 systematic method of making sure that that  
10 company or owner-operator is having their trucks  
11 maintained on a systematic basis, a regular  
12 basis. They've got that in place.

12:11:06PM

13 Q. You say FedEx has that in place and  
14 that's by virtue of the maintenance monthly  
15 reports that we were just talking about, right?

16 A. Correct.

17 Q. That's the basis for that opinion?

18 A. That's the basis for that opinion.

12:11:16PM

19 Q. What about CLR's policies; how does  
20 Kehler know when to get the truck maintained?

12:11:34PM

21 A. Well, let me start off by saying he's  
22 got 20 to 25 years experience operating trucks.  
23 Most drivers know when a B service needs to  
24 happen based on the miles that he's looking at  
25 on that truck on a weekly, daily basis.



1 He knows when they do their  
2 inspections that if something doesn't look  
3 right, he needs to take it into a shop.

4 It's just road experience with these  
12:11:50PM 5 guys and time in some cases, knowing that they  
6 have to have the truck oil changed.

7 Q. In your opinion, is it an industry  
8 standard that contractors rely upon the  
9 experience of their drivers to maintain the  
10 vehicle?

11 MR. KAPP: Form.

12 THE WITNESS: Depends on how the  
13 organization's set up. If it's an  
14 owner-operator, absolutely. In fact, the  
12:12:18PM 15 owner-operator doesn't even have to fill out  
16 daily inspection reports, because he owns the  
17 truck, he knows the truck, works on the truck,  
18 and has the truck maintained.

19 In this case with a couple trucks and  
12:12:30PM 20 with their team, it's similar to an  
21 owner-operator situation where you've got Kehler  
22 as the lead driver, most experienced. The other  
23 driver, Marks, has 15 years' experience. They  
24 take care of the truck and they tell Mr. Rodwick  
12:12:45PM 25 what needs to be done and he says get it done.

1 BY MR. LIEBERMAN:

2 Q. Is that industry standard in the sense  
3 that neither FedEx nor CLR has a detailed  
4 maintenance schedule and they rely exclusively  
12:12:58PM 5 on the experience of two drivers?

6 MR. KAPP: Object to the form as  
7 compound, but go ahead.

8 BY MR. LIEBERMAN:

9 Q. If you don't understand, I can  
12:13:06PM 10 rephrase.

11 A. I kind of understand that. And  
12 generally, yes.

13 However, an owner-operator would know,  
14 based on the -- probably the manual of the truck  
12:13:20PM 15 manufacturer that every so many miles -- like  
16 you and I have a car -- you get your oil  
17 changed.

18 So that would be the standard I guess  
19 for an owner-operator to have his oil changed.  
12:13:33PM 20 That would be one standard.

21 Q. Did Swift operate in that regard?

22 A. With regard to an owner-operator  
23 taking care of his truck?

24 Q. Well, with regard to -- let me strike  
12:13:45PM 25 that. Let me ask it this way.

1 Did Swift have written policies and  
2 procedures regarding regular maintenance?

3 MR. KAPP: Of what, contractor trucks  
4 or company-owned trucks?

12:13:54PM

5 MR. LIEBERMAN: Both.

6 MR. KAPP: Both? Well, break it down.

7 THE WITNESS: No, sir. We did have  
8 for company-owned trucks, and we talked about  
9 that before where the driver doesn't own the  
10 truck, doesn't maintain the truck. He just  
11 drives the truck.

12:14:05PM

12 And so we have procedures, times that  
13 he has to get his B service in and when he takes  
14 the truck in and if this happens, who to call.

12:14:17PM

15 With owner-operators they run the  
16 truck. That's their truck. They can take it to  
17 a Swift shop and have it repaired or they can  
18 take it to Sapp Brothers and get it repaired.  
19 That's their business. That's what their  
20 business is.

12:14:30PM

21 BY MR. LIEBERMAN:

22 Q. How many employees -- non-driver  
23 employees does CLR have?

24 A. I thought there was just two or three  
25 potential drivers and the owner.

12:14:56PM

1 Q. The owner being Chris Rodwick?

2 A. Yeah, Chris Rodwick.

3 Q. Chris Rodwick effectively runs CLR,  
4 correct?

12:15:06PM

5 A. I believe so.

6 Q. What is Chris Rodwick's experience in  
7 maintaining tractor-trailers?

8 A. His experience is very little, very,  
9 very little.

12:15:16PM

10 Q. Right.

11 A. I suspect that's why he hired a guy  
12 with 25 years to run his truck.

13 Q. He never met Kehler.

12:15:24PM

14 A. I understand that. Yeah, they've  
15 talked, and I don't think he's ever met him.

16 Q. Okay. The vetting process was done  
17 exclusively by FedEx, correct?

18 A. Yes. He sent them in to get -- well,  
19 that is correct. Kehler has worked for  
20 contractors for FedEx on a previous occasion or  
21 so. So he was experienced with FedEx.

12:15:38PM

22 And I think he just relied on Kehler  
23 almost being like an owner-operator situation  
24 where he takes care of the truck.

12:15:52PM

25 Q. Rodwick was in California, right?

1 A. I think so.

2 Q. And the truck is based out of Salt  
3 Lake, Utah, right?

12:16:04PM

4 A. Purchased and based out of Salt Lake,  
5 I believe.

6 Q. And Kehler and Marks reside in Utah,  
7 right?

8 A. That's correct.

12:16:10PM

9 Q. And at least as far as the record  
10 reflects, Rodwick has never met either Kehler or  
11 Marks?

12 A. I believe that's correct.

13 Q. Rodwick has never had a CDL?

14 A. I think that's true.

12:16:24PM

15 Q. Rodwick has never maintained a  
16 tractor?

17 A. True.

18 Q. Rodwick has never driven a tractor?

19 A. True.

12:16:31PM

20 Q. Are you aware that Marks called  
21 Rodwick a ghost?

22 A. Called him a what?

23 Q. A ghost.

24 MR. KAPP: Object to the form.

12:16:41PM

25 THE WITNESS: Possible.

1 BY MR. LIEBERMAN:

2 Q. CLR has no employee policies that  
3 we're aware of --

4 MR. KAPP: Object to the form.

12:16:49PM

5 BY MR. LIEBERMAN:

6 Q. -- is that true?

7 A. I'm not aware of any.

8 Q. Are you aware of any requirements by  
9 the CLR drivers to contact CLR at any point  
10 during their travels?

12:17:01PM

11 A. No, not when you've only got one  
12 owner. They're the operators of that truck.

13 Q. Is this setup of an absentee owner  
14 common in the industry?

12:17:18PM

15 MR. KAPP: Object to the form.

16 THE WITNESS: I have not seen this  
17 before. Generally, an owner of a truck is  
18 somewhat involved, in most cases that I've  
19 known.

12:17:58PM

20 BY MR. LIEBERMAN:

21 Q. Regulations require the drivers to  
22 have specific knowledge, correct, on various  
23 topics; is that true?

24 A. General skills and knowledge, that's  
12:18:06PM 25 correct.

1 (Deposition Exhibit No. 241 marked for  
2 identification.)

3 BY MR. LIEBERMAN:

4 Q. Sir, I've marked as Exhibit 241  
5 Regulation 383.111.

12:18:30PM

6 Are you familiar with this regulation?

7 A. I am.

8 Q. I'm looking specifically at A, it  
9 says, All commercial motor vehicle operators  
10 must have knowledge of the following 20 general  
11 areas, correct?

12:18:40PM

12 A. Correct.

13 Q. Under (1)(ii) it says, "Procedures for  
14 safe vehicle operations."

12:18:49PM

15 Is that true? Am I reading that  
16 correctly?

17 A. Correct.

18 Q. Under (1) 5 or (v) it says, "The  
19 effects of alcohol and drug use upon safe  
20 commercial motor vehicle operations."

12:19:02PM

21 Is that correct?

22 A. Correct.

23 Q. If you turn to the third page -- I'm  
24 losing track of the roman numerals, but under 9  
25 it says, "Speed management. The importance of

12:19:16PM

1 understanding the effects of speed, including:  
2 (i) speed and stopping distance."

3 Is that correct? It's towards the  
4 top.

12:19:32PM

5 MR. KAPP: What page are you on?

6 MR. LIEBERMAN: Page 3.

7 MR. KAPP: We were on the wrong page.

8 THE WITNESS: Okay. Did you say speed  
9 management, 9?

12:19:45PM

10 BY MR. LIEBERMAN:

11 Q. Uh-huh.

12 A. That's correct.

13 Q. If we turn to page 4, No. 13 talks  
14 about hazard perceptions.

12:19:55PM

15 A. Yes.

16 Q. No. 14 talks about emergency  
17 maneuvers?

18 A. Yes.

19 Q. And under emergency maneuvers, Roman  
20 numeral 5, (v), says, "Blowouts," correct?

12:20:03PM

21 A. Correct.

22 Q. Under these regulations, it is FedEx's  
23 and CLR's responsibility to ensure that Kehler  
24 and Marks have knowledge of these areas,  
25 correct?

12:20:16PM



1 MR. KAPP: Object to the form.

2 THE WITNESS: That's correct. And

3 keep in mind that they had this basic knowledge

4 from the day they got their CDL. They're

12:20:25PM

5 required to have that same knowledge way back in

6 time and then they grow depending on experience.

7 BY MR. LIEBERMAN:

8 Q. So what did CLR do to ensure that

9 Kehler and Marks had knowledge of these issues

12:20:38PM

10 we just enumerated?

11 A. Well, I don't know what CLR did, but I

12 know that the contractors prior to CLR would

13 have looked at their driver's license. Having a

14 CDL, particularly including doubles, tells them

12:20:57PM

15 they have passed tests do that, as well as FedEx

16 has seen their CDL.

17 And there's also an equipment

18 examination by FedEx at some point in time with

19 Kehler on a couple different occasions, I'm not

12:21:10PM

20 sure, with regard to their knowledge about

21 hooking up doubles.

22 Q. Short of looking at a CDL license, do

23 you know if CLR did anything else to confirm

24 that Kehler and Marks had knowledge of these

12:21:38PM

25 general areas under 383.111?

1 MR. KAPP: Object to the form. Asked  
2 and answered.

3 THE WITNESS: Well, I guess how I  
4 should respond to that is they either talked to  
12:21:51PM 5 them and knew somehow they had 15 to 25 years  
6 experience as a CLR driver with the idea that  
7 they would have had to have a CDL.

8 And, secondly, that they asked to have  
9 FedEx verify their qualifications by setting up  
12:22:11PM 10 the driver qualifications file, and that  
11 happened.

12 So that's the best way I can answer  
13 that question.

14 BY MR. LIEBERMAN:

12:22:18PM 15 Q. Do you know if Chris Rodwick or anyone  
16 else at CLR ever talked to Kehler about these  
17 issues before FedEx hired him?

18 A. I don't know that.

19 Q. Same question as to Marks.

12:22:29PM 20 A. I don't know that. I don't know if he  
21 talked to him. I know he may have known that  
22 they worked for the other contractors previous  
23 to that and were qualified, but I don't know  
24 specifically if he talked to them.

12:22:41PM 25 Q. Have you ever seen any employee files

1 from CLR for Kehler or Marks?

2 A. I have not. Those have not been  
3 provided.

4 Q. Do you know if they exist?

12:22:50PM

5 A. I don't know if they do or not.

6 Q. Is it fair to say that CLR relied upon  
7 FedEx to vet these drivers?

8 MR. KAPP: Object to form.

9 THE WITNESS: I think they probably

12:23:00PM

10 did, because FedEx is in the business to check  
11 contractors and they've got a routine system set  
12 up. And that goes back to the safety management  
13 program we've just had a big discussion about.

14 BY MR. LIEBERMAN:

12:23:14PM

15 Q. What specifically did FedEx do to  
16 ensure that Kehler and Marks had general  
17 knowledge regarding blowouts under 383.111?

18 MR. KAPP: Object to the form. It's  
19 been asked and answered.

12:23:27PM

20 MR. LIEBERMAN: It's been answered in  
21 generalities.

22 BY MR. LIEBERMAN:

23 Q. I want to know if you know  
24 specifically what FedEx did to ensure that  
12:23:34PM 25 Kehler and Marks had that required knowledge

1 under the regulations.

2 MR. KAPP: Other than hiring a driver  
3 that had a CDL and had been tested?

12:23:42PM

4 MR. LIEBERMAN: Move to strike. This  
5 is not your deposition. I'm asking the witness.

12:23:56PM

6 THE WITNESS: Again, other than  
7 qualifying them, knowing about their experience,  
8 I don't know of any specific discussions FedEx  
9 had with either of those two drivers with regard  
10 to blowouts.

11 That's just part of the rules where  
12 when they get a CDL, they're tested on what to  
13 do when they have blowouts to get their CDL.  
14 BY MR. LIEBERMAN:

12:24:08PM

15 Q. Surely FedEx would want to know if the  
16 driver who's hauling their trailers down the  
17 road with the FedEx label on the side have  
18 knowledge of what to do in the event of a tire  
19 disablement, correct?

12:24:18PM

20 MR. KAPP: Object to the form.

21 THE WITNESS: I would expect them to  
22 know that after 20 years of safe driving and  
23 having experience, blowouts and everything else,  
24 they would probably know that.

12:24:29PM

25 BY MR. LIEBERMAN:

1 Q. So would you expect them to inquire  
2 upon the drivers that would be hauling these  
3 trailers if they actually have knowledge on what  
4 to do in the event of a tire disablement at  
5 highway speeds?

12:24:38PM

6 MR. KAPP: Object to the form.

7 THE WITNESS: I don't know if I would  
8 expect them to ask the drivers if they have that  
9 knowledge, but it's reasonable for them to  
10 believe they had that knowledge based on their  
11 experience, their tenure, their CDL license, and  
12 all of the other regulations that they have to  
13 have complied with without having a crash.

12:24:45PM

14 MR. KAPP: When did you say we were  
15 eating lunch?

12:25:19PM

16 MR. LIEBERMAN: Right now.

17 (Recessed from 12:25 p.m. to 1:15  
18 p.m.)

19 BY MR. LIEBERMAN:

20 Q. Mr. Ritchie, do the federal  
21 regulations comment at all on radar detectors?

01:12:52PM

22 A. I was gonna look that up. I can't  
23 recall. It may.

24 MR. LIEBERMAN: Let's mark this as  
25 242.

01:13:08PM

1 (Deposition Exhibit No. 242 marked for  
2 identification.)

3 BY MR. LIEBERMAN:

01:13:25PM 4 Q. Sir, what I've marked as Exhibit 242  
5 is Regulation 392.71 regarding radar detectors.  
6 It reads, (a), "No driver shall use a radar  
7 detector in a commercial motor vehicle or  
8 operate a commercial motor vehicle that is  
9 equipped with or contains any radar detector."

01:13:38PM 10 Did I read that correctly?

11 A. You did.

12 Q. Do you know if this particular FedEx  
13 tractor that we're talking about had a radar  
14 detector in it?

01:13:45PM 15 MR. KAPP: Object to the form.

16 THE WITNESS: As I recall, there was a  
17 radar detector somewhere in the truck owned by  
18 Mr. Marks, I believe.

19 BY MR. LIEBERMAN:

01:13:58PM 20 Q. What is your understanding, if any, as  
21 to what a radar detector is used for?

22 A. It's used to pick up radar signals  
23 from, I would say, law enforcement doing road  
24 speed checks.

01:14:09PM 25 Q. To avoid getting a speeding ticket?

1 A. Generally, yes.

2 MR. KAPP: Object to the form.

3 BY MR. LIEBERMAN:

01:14:16PM

4 Q. If a radar detector was in the subject  
5 tractor, that would be a violation of the  
6 regulations, would it not?

7 A. Under this section, that would be.

01:14:27PM

8 Q. And that would be a violation that  
9 would be attributable to both CLR and FedEx,  
10 correct?

11 MR. KAPP: Object to the form.

12 THE WITNESS: Well, technically, yes.  
13 Again, the equipment's CLR's equipment, but they  
14 shouldn't have a radar detector in the  
15 equipment.

01:14:39PM

16 BY MR. LIEBERMAN:

17 Q. But ultimately, yes. It would be a  
18 violation for both FedEx and CLR in this  
19 scenario?

01:14:45PM

20 MR. KAPP: Same objection.

21 THE WITNESS: To have radar detectors  
22 in the trucks, it would be, yes.

23 BY MR. LIEBERMAN:

01:14:55PM

24 Q. Do you know if FedEx or CLR did  
25 anything to prohibit the use of radar detectors

1 in the tractors?

2 A. Generally, they would inform the  
3 contractor drivers that they've got to follow  
4 the regulations and this is one of the  
01:15:11PM 5 regulations, not to have a radar detector.

6 Q. Again, you said generally. I'm  
7 looking specifically.

8 Do you know if FedEx or CLR instructed  
9 its drivers to not use a radar detector?

01:15:24PM 10 MR. KAPP: Same objection.

11 THE WITNESS: Specifically, no.  
12 They're big boys. They should know that.

13 BY MR. LIEBERMAN:

14 Q. Is it commonly known that a commercial  
01:15:33PM 15 vehicle should not have a radar detector in it?

16 A. Oh, yes.

17 Q. But the experience and training that  
18 you're aware of for Kehler and Marks, would you  
19 expect them to know that a radar detector was  
01:15:49PM 20 prohibited?

21 MR. KAPP: Object to the form.

22 THE WITNESS: I would expect that,  
23 yes.

24 BY MR. LIEBERMAN:

01:16:16PM 25 Q. Do you know if morphine is a



1 Schedule 1 or Schedule 2 drug?

2 A. Morphine?

3 Q. Yes, sir.

4 A. I'm not sure what schedule drug it is,  
01:16:27PM 5 and I don't know how that relates to quantities  
6 or something like that. It could be a Schedule  
7 1 if it's morphine, morphine, but I'm not sure.  
8 I thought it was a different kind of morphine,  
9 not like OxyContin or something like that.

01:16:45PM 10 Q. You're speaking specifically to  
11 Mr. Marks' morphine?

12 A. Correct.

13 Q. So you're aware that he was ingesting  
14 morphine while driving this vehicle?

01:16:53PM 15 MR. KAPP: Object to the form.

16 THE WITNESS: I believe so.

17 BY MR. LIEBERMAN:

18 Q. Is he required under the regulations  
19 to inform FedEx or CLR that he is, in fact,  
01:17:04PM 20 taking morphine while operating the tractor?

21 A. No, he's not, but he's required to  
22 pass a Federal Motor Carrier Safety physical,  
23 DOT physical. And I believe he informed the  
24 physician who reviewed his use of taking that  
01:17:20PM 25 drug over quite a number of year period and he

1 qualified him and allowed him to drive for a  
2 period of two years on his physical.

3 Q. Where are you getting that  
4 information?

01:17:33PM 5 A. From the DOT physical that I believe  
6 is in his file.

7 Q. Do you believe that information  
8 contains anything related to morphine use?

9 A. I thought I saw that he declared that  
01:17:46PM 10 he was taking some kind of medication for back  
11 pain. I think that was on the physical.

12 Q. Do you know if a physician  
13 specifically advised Mr. Marks that ingesting  
14 morphine while driving would not adversely  
01:18:13PM 15 affect his ability to safely operate the  
16 vehicle?

17 A. Will not adversely affect it?

18 Q. Do you know if a physician told him  
19 that?

01:18:19PM 20 A. That sounds familiar. I'm not sure.  
21 I recall that it had to do with his DOT physical  
22 that was scheduled and that he took and that the  
23 medical examiner cleared him of any problems  
24 driving a commercial motor vehicle.

01:18:38PM 25 Q. Would you defer to those records to

1 the extent that they cover this issue?

2 A. I think I would.

3 Q. If you could bring your report back  
4 up. If you could turn to page 10. This section  
01:19:22PM 5 is in regards to your opinions with respect to  
6 the lease operating agreement; is that correct?

7 A. It is.

8 Q. Have you reviewed the lease operating  
9 agreement?

01:19:30PM 10 A. I have.

11 Q. Can I just call it the operating  
12 agreement?

13 A. That's fine. That's what I would call  
14 it.

01:19:36PM 15 Q. Okay. Good.

16 Have you reviewed all the addendums as  
17 well?

18 A. I have gone through the report, but I  
19 have focused on Addendum 10 mostly that relates  
01:19:45PM 20 to the safety guidelines that FedEx requires  
21 drivers to comply with.

22 Q. I just want to get some terminology  
23 down. In the context of the operating  
24 agreement, FedEx is the lessor, correct?

01:20:03PM 25 A. Correct.

1 Q. And CLR -- I have that backwards,  
2 don't I?

3 A. CLR would be the lessee.

4 Q. Thank you.

01:20:12PM

5 So FedEx is the lessor and CLR is the  
6 lessee?

7 A. Lessee, lessee.

8 Q. Softy, hardy. I understand.

9 No. We have that backwards. Let's

01:20:30PM

10 just mark this. It will be easier.

11 MR. KAPP: Now you have me confused.

12 (Deposition Exhibit No. 243 marked for  
13 identification.)

14 BY MR. LIEBERMAN:

01:20:51PM

15 Q. Sir, what I've marked as Exhibit 243  
16 is Federal Regulation 376.2.

17 Are you familiar with this particular  
18 one?

19 A. Yes.

01:21:02PM

20 Q. If we look down -- this is the  
21 definitions for lease contracts. If we look  
22 down to Definition F, "Lessor. In a lease, the  
23 party granting the use of equipment with or  
24 without driver, to another."

01:21:16PM

25 Did I read that correctly?

1 A. You did. That would be CLR.

2 Q. That would be -- so CLR is the lessor?

3 A. Correct.

4 Q. Section G says, "Lessee. In a lease,  
01:21:24PM 5 the party acquiring the use of equipment with or  
6 without driver, from another."

7 That would be FedEx, correct?

8 A. Correct.

9 Q. Are you familiar with the regulations  
01:21:44PM 10 regarding lease agreements?

11 A. Generally, yes.

12 Q. Are you specifically familiar with  
13 376.12?

14 A. If you show it to me, I'll let you  
01:21:56PM 15 know.

16 MR. LIEBERMAN: Okay. We'll mark it.  
17 (Deposition Exhibit No. 244 marked for  
18 identification.)

19 BY MR. LIEBERMAN:

01:22:22PM 20 Q. Sir, what I've marked as Exhibit 244  
21 is Regulation 376.12. You can look over it.

22 Have you seen it before?

23 A. I have seen this before.

24 Q. This provision requires certain --  
01:22:30PM 25 strike that.

1           This regulation requires certain  
2 provisions to be in any lease contract; isn't  
3 that correct?

4           A. That's correct.

01:22:43PM

5           Q. And if we look at (c)(1) the  
6 regulation requires that "The lease shall  
7 provide that the authorized carrier lessee shall  
8 have exclusive possession, control and use of  
9 the equipment for the duration of the lease.

01:22:55PM

10 The lease shall further provide that the  
11 authorized carrier lessee shall assume complete  
12 responsibility for the operation of the  
13 equipment for the duration of the lease."

14           Did I read that correctly?

01:23:05PM

15           A. You did.

16           Q. Does that section apply to FedEx?

17           A. It would.

18           Q. And do you know if the lease agreement  
19 satisfies Section (c)(1)?

01:23:12PM

20           MR. KAPP: Object to the form.

21           THE WITNESS: The lease agreement  
22 entered in by FedEx to CLR?

23 BY MR. LIEBERMAN:

24           Q. Yes.

01:23:21PM

25           A. Yes, I believe it did.

1 Q. So FedEx shall assume complete  
2 responsibility for the operation of the  
3 equipment during the duration of the lease?

4 MR. KAPP: Object to the form.

01:23:30PM

5 BY MR. LIEBERMAN:

6 Q. Is that true?

7 A. Duration of the lease. However, I do  
8 recall another portion of the agreement

01:23:42PM

9 indicated that if the contractor wanted -- I  
10 think it's this case, wanted to use that truck  
11 for some other purpose, they would have to  
12 remove the decals from the door. I believe that  
13 was in the agreement as well.

14 Q. To your knowledge, did CLR ever do  
15 that?

01:23:53PM

16 A. To my knowledge, no.

17 Q. Can the contents or the terms of an  
18 operating agreement absolve FedEx's  
19 responsibilities under the regulations?

01:24:10PM

20 MR. KAPP: Object to the form.

21 THE WITNESS: No. They would still be  
22 considered the authorized motor carrier with the  
23 lease or the agreement between two motor  
24 carriers.

01:24:23PM

25 BY MR. LIEBERMAN:

1 Q. So regardless of what the operating  
2 agreement says, FedEx still assumes complete  
3 responsibility for the operation of the  
4 equipment for the duration of the lease,  
5 correct?

01:24:31PM

6 MR. KAPP: Form.

7 THE WITNESS: For the duration of the  
8 lease and also with regard to any applicable  
9 regulations.

01:25:12PM

10 BY MR. LIEBERMAN:

11 Q. Let's turn to Section 1.13 of the  
12 operating agreement. And that's gonna be on  
13 Bates labeled page C&G-FXG-001459.

14 A. Have you already given that one to me?

01:25:31PM

15 MR. LIEBERMAN: I did not mark the  
16 contract yet.

17 (Deposition Exhibit No. 245 marked for  
18 identification.)

19 BY MR. LIEBERMAN:

01:25:45PM

20 Q. My apologies, Mr Ritchie. Exhibit 245  
21 is the operating agreement, is that correct,  
22 between CLR and FedEx?

23 A. Appears to be it, yes.

24 Q. If you could turn to the Bates label  
25 page 1459. I'm going to direct your attention

01:26:39PM



1 on page 1459 to Section 1.13.

2 Do you see that there on the bottom?

3 A. Yes.

4 Q. Contractor -- which of course in this  
01:26:56PM 5 context refers to CLR, correct?

6 A. Correct.

7 Q. It says, "Contractor shall have the  
8 obligation to assure that all persons who  
9 operate the equipment are fully trained and  
01:27:04PM 10 capable of meeting the customer service  
11 standards and safety obligations set forth in  
12 this agreement."

13 Did I read that correctly?

14 A. You did.

01:27:10PM 15 Q. What did CLR do to ensure that Kehler  
16 and Marks were fully trained?

17 A. I think we talked about this a little  
18 bit earlier where if we have the two trucks and  
19 Chris sent those two drivers in to be qualified  
01:27:33PM 20 by FedEx, they would have known they were  
21 qualified by having a CDL under Section 383,  
22 generally knowledge and skills.

23 Q. So just having a CDL means you're  
24 fully trained?

01:27:50PM 25 A. No, sir. The next thing is he or at

1 least FedEx knew, based on taking information on  
2 the contractor application, that they had  
3 multiple years of commercial driving experience,  
4 on-road experience that I believe at that time  
01:28:03PM 5 was accident free. That helps with the  
6 experience.

7 So those two things combined would  
8 have told not only FedEx, but also Chris, that  
9 they were qualified drivers.

01:28:17PM 10 Q. FedEx did the vetting and provided  
11 information -- at least some information to CLR,  
12 correct?

13 MR. KAPP: Form.

14 THE WITNESS: I don't know what  
01:28:28PM 15 information they provided. What they did is  
16 they qualified those two drivers based on the  
17 regulations, because they're a motor carrier --  
18 primary motor carrier. So they may have told  
19 him. I'm sure they did if they said they're  
01:28:42PM 20 gonna lease your trucks.

21 BY MR. LIEBERMAN:

22 Q. But you don't know?

23 A. I would only assume that because they  
24 leased the trucks.

01:28:50PM 25 Q. You don't know what, if any,

1 conversations or information was exchanged  
2 between CLR and FedEx regarding the adequacy of  
3 the training that Kehler and Marks had received?

4 A. Specifically, no.

01:29:05PM

5 Q. Is it fair to say that CLR relied  
6 entirely on FedEx to make that determination?

7 MR. KAPP: Object to the form.

8 THE WITNESS: Well, I don't think so  
9 entirely. CLR would have been the motor carrier  
10 that would have asked them to operate their  
11 equipment and for FedEx to be -- to qualify the  
12 two.

01:29:18PM

13 So it would have started off with CLR  
14 referring the two drivers to be qualified to  
15 operate his one or two trucks.

01:29:31PM

16 BY MR. LIEBERMAN:

17 Q. CLR provided the two drivers' names to  
18 FedEx and FedEx vetted those drivers. Is that  
19 your understanding?

01:29:39PM

20 A. Basically, correct.

21 Q. Outside of providing those names, did  
22 CLR do any other independent vetting of these  
23 drivers to ensure that they were fully trained?

24 A. I don't know. I don't know if they  
25 did or didn't.

01:29:53PM

1 Q. Do you have Addendum 10 handy?

2 A. I do.

3 Q. Addendum 10 has been marked as  
4 Exhibit 236, correct?

01:30:52PM

5 A. Correct.

6 Q. What I'd like to point your attention  
7 to is Term 5.9 of Addendum 10. It's actually on  
8 the last page of this exhibit, top of the page.

9 5.9 reads: Contractor Safety and

01:31:13PM

10 Compliance Program. To ensure compliance with  
11 applicable safety- and compliance-related  
12 obligations, including the Federal Motor Carrier  
13 Safety Regulations, contractor warrants and  
14 represents that it maintains and administers a  
15 safety and compliance program to ensure that  
16 personnel assigned by contractor to provide  
17 services under the agreement are continuously  
18 qualified and trained with respect to safe  
19 operation of CMVs in accordance with applicable  
20 state, federal, and municipal laws, rules, and  
21 regulations and contractor's obligations under  
22 the agreement.

01:31:26PM

01:31:41PM

23 Did I read that correctly?

24 A. You did.

01:31:47PM

25 Q. What do you know, if anything, that

1 CLR did -- well, strike that.

2 Did CLR have and maintain a safety and  
3 compliance program?

4 MR. KAPP: Object to the form.

01:31:58PM

5 THE WITNESS: I don't know if they did  
6 or didn't. I have not read or had any evidence  
7 about their safety compliance program.

8 BY MR. LIEBERMAN:

01:32:08PM

9 Q. Do you know if FedEx did anything to  
10 ensure that CLR had one of those programs?

11 MR. KAPP: Same objection.

12 THE WITNESS: No, I'm not.

13 BY MR. LIEBERMAN:

01:32:24PM

14 Q. Let's go to the next paragraph. Same  
15 section. "Subject to legal and regulatory  
16 requirements, contractor is responsible for  
17 development, implementation, and performance of  
18 its safety and compliance program and for  
19 discretion in personnel-related matters in  
20 connection with its program, including but not  
21 limited to hiring, discipline, termination,  
22 supervision, compensation, and scheduling."

01:32:36PM

23 Did I read that correctly?

24 A. Yes, you did.

01:32:45PM

25 Q. And is it fair to say that you have

1 no -- strike that.

2 Do you know what CLR did?

3 MR. KAPP: Same objection.

4 BY MR. LIEBERMAN:

01:33:00PM

5 Q. To perform a safety compliance  
6 program, if such program existed?

7 MR. KAPP: Same.

8 THE WITNESS: I don't know that.

9 BY MR. LIEBERMAN:

01:33:07PM

10 Q. The last sentence reads, "Upon request  
11 by FedEx Ground, contractor agrees to  
12 demonstrate the existence of its safety and  
13 compliance program, and contractor agrees that  
14 an unreasonable failure to do so constitutes a  
15 material breach of the agreement."

01:33:18PM

16 Did I read that correctly?

17 A. Yes, you did.

18 Q. Do you know if FedEx ever asked CLR  
19 for its safety and compliance program?

01:33:26PM

20 MR. KAPP: Same.

21 THE WITNESS: I don't know. I've not  
22 read anything that indicates that.

23 BY MR. LIEBERMAN:

24 Q. Let's go back to your report, if we  
25 can.

01:33:56PM

1 If you can turn to page 12 of your  
2 report. That is a section entitled CLR Vehicle  
3 Inspections, correct?

4 A. Correct.

01:34:27PM

5 Q. And I have a general question to  
6 start.

7 On a tractor hauling two trailers, how  
8 long should a pretrip inspection last for it to  
9 be thorough?

01:34:38PM

10 A. Hauling two trailers?

11 Q. Yeah, just the tractor-trailer in this  
12 case.

13 MR. KAPP: Form.

01:34:46PM

14 THE WITNESS: I would say anywhere  
15 between 15 minutes to a half hour.

16 BY MR. LIEBERMAN:

17 Q. Why would it take that long?

18 A. Because there are four pieces of  
19 equipment to be looked at.

01:35:00PM

20 Q. Could you adequately perform an  
21 inspection in one minute?

22 MR. KAPP: Object to the form.

23 THE WITNESS: Pretrip inspection,  
24 probably not.

01:35:09PM

25 BY MR. LIEBERMAN:

1 Q. Two minutes?

2 MR. KAPP: Same.

3 THE WITNESS: It would need to be  
4 longer than that.

01:35:16PM

5 BY MR. LIEBERMAN:

6 Q. And that longer is that 15 to 25 you  
7 just talked about?

8 A. 15 to 25, and, again, this is a first  
9 pretrip inspection of the equipment, first

01:35:25PM

10 inspection.

11 Q. What do you mean by first inspection?

12 A. Well, when a driver does a vehicle  
13 inspection, hooks up to new trailers, new  
14 equipment, new converter gear, they'll do a full  
15 pretrip inspection.

01:35:35PM

16 Inspections along the trip, until that  
17 equipment is removed and new equipment put on,  
18 they will be doing in-trip inspections.

19 Q. The drivers need to do a pretrip  
20 inspection at the start of each shift, correct?

01:35:47PM

21 A. At the start of each shift if they're  
22 a sole driver, yes. This is not a slip seat  
23 situation. So they do a pretrip inspection, but  
24 when you have a team, they're consistently doing  
25 in-trip inspections. The vehicle's always

01:36:01PM



1 moving.

2 Q. If the vehicle leaves Salt Lake City  
3 and Kehler's driving, how long should his  
4 pretrip inspection have lasted, his first drive?

01:36:18PM

5 A. The first --

6 MR. KAPP: Same objection.

7 THE WITNESS: The initial inspection  
8 that we were talking about --

9 BY MR. LIEBERMAN:

01:36:22PM

10 Q. You're calling it an initial  
11 inspection. I'm just calling in a pretrip  
12 inspection.

13 A. 15 to 30 minutes.

01:36:29PM

14 Q. His shift ends and at some point Marks  
15 takes over driving.

16 What is Marks' responsibility with  
17 respect to inspecting the tractor-trailers?

18 A. To do a pretrip inspection.

19 Q. And how long should his inspection  
20 last?

01:36:39PM

21 A. It would be --

22 MR. KAPP: Same.

23 THE WITNESS: -- somewhat of an  
24 in-trip inspection. 15 minutes.

01:36:44PM

25 BY MR. LIEBERMAN:

1 Q. Are there any other inspections these  
2 drivers have to do, exclusive of an annual  
3 inspection or a roadside inspection. I'm just  
4 talking about any other inspections they're  
5 required to do?

01:36:56PM

6 A. There are a few different kinds of  
7 inspections. There's a pretrip inspection,  
8 post-trip inspection at the end, and there's an  
9 in-trip inspection. And, of course, then they  
10 have to fill out any documents if they have, you  
11 know, major problems. So there's basically  
12 three inspections.

01:37:09PM

13 Q. How long should a post inspection last  
14 on a tractor-trailer such as the one in this  
15 case?

01:37:19PM

16 MR. KAPP: Same.

17 THE WITNESS: About the same as a  
18 pretrip inspection.

19 BY MR. LIEBERMAN:

20 Q. Is that opinion based on -- well, what  
21 is that opinion based on?

01:37:23PM

22 A. It's based on my opinion of what it  
23 takes to do an inspection on three vehicles,  
24 four vehicles.

01:37:33PM

25 Q. Your experience?

1 A. My experience, sure. Knowledge and  
2 experience over the last 25, 30 years.

3 Q. Does a pretrip inspection involve  
4 checking tire pressures?

01:37:46PM

5 A. It does.

6 Q. How is someone supposed to inspect the  
7 tire pressures of a tractor-trailer? And let's  
8 focus on the steer tires.

01:37:58PM

9 A. There's multiple methods to do that.  
10 You can look at a steer tire. You can check it  
11 with a tire gauge. And, obviously, there's  
12 visual and feel of a steer tire, more than just  
13 tire pressure.

01:38:13PM

14 Q. Can you determine a tire pressure by  
15 just looking at it?

01:38:27PM

16 A. Not accurately, no. But you can tell  
17 if there's a bulge or if the tire looks  
18 different than other tires. You can generally  
19 get an idea on whether or not the tire's okay or  
20 not.

21 Q. Can you determine a tire's pressure by  
22 thumping it?

23 A. Generally, yes, you can.

24 Q. Accurately?

01:38:36PM

25 A. Not like with a gauge.

1 Q. What's the error rate on a thumper?

2 A. What's the what?

3 Q. What's the error rate on a thumper?

4 A. It depends on how the other tires

01:38:48PM

5 sound when you're thumping tires.

6 Q. But if all the tires are, say,  
7 underinflated by 20 pounds, they're all gonna  
8 sound the same, correct?

9 A. Correct.

01:38:54PM

10 Q. And so what you're really only doing  
11 is comparing how they sound to another tire  
12 without knowing what the pressures actually are;  
13 isn't that true?

14 A. That's true.

01:39:01PM

15 MR. KAPP: Object to the form.

16 BY MR. LIEBERMAN:

17 Q. The only way to actually determine  
18 what a tire pressure is is to use a tire gauge,  
19 correct?

01:39:07PM

20 A. Correct.

21 Q. In pretrip inspections, should drivers  
22 such as Kehler and Marks be using tire gauges on  
23 the steer tires?

24 MR. KAPP: Form.

01:39:17PM

25 THE WITNESS: They do and they should

1 whenever they feel like they need to. They  
2 don't do it on every pretrip inspection.

3 BY MR. LIEBERMAN:

4 Q. I understand they don't. I know they  
5 don't.

01:39:26PM

6 What I'm asking is is it your opinion  
7 that a commercial driver should be using a tire  
8 gauge to check the air pressures of the steer  
9 tires during a pretrip inspection?

01:39:38PM

10 MR. KAPP: Same.

11 THE WITNESS: Not on every inspection,  
12 no.

13 BY MR. LIEBERMAN:

14 Q. How many?

01:39:42PM

15 A. Probably about as many as we would in  
16 our cars. Once a week. Mr. Marks said every  
17 couple days he checks it. Just depends on when  
18 they want to check it.

19 Q. In your opinion, that's acceptable  
20 behavior by commercial drivers?

01:39:56PM

21 A. Yes.

22 Q. What is that based on?

23 A. It's based on my knowledge and  
24 experience over the years of how drivers do  
25 things.

01:40:03PM

1 Q. The PTDI manual that you attached to  
2 your report recommends the use of a tire gauge  
3 to check tire pressures, does it not?

4 A. It does on the pretrip inspection.  
01:40:14PM 5 And that's the same inspection for when drivers  
6 are taking that CDL. They recommend checking  
7 the tire pressure when they're taking their CDL.

8 Q. The model commercial drivers license  
9 manual also tells you the only acceptable way to  
01:40:27PM 10 check tire pressure is to use a tire pressure  
11 gauge, correct?

12 A. True.

13 Q. The Utah commercial driver's license  
14 handbook says the only acceptable way to check a  
01:40:36PM 15 tire pressure is to use a pressure gauge,  
16 correct?

17 A. Correct.

18 Q. Like we just said, the manual that you  
19 attached to your report says that you use a tire  
01:40:44PM 20 gauge to check the pressures, correct?

21 A. That's true.

22 Q. So what is the basis for your opinion  
23 that Kehler and Marks don't have to use a tire  
24 pressure gauge to check the steer tire pressures  
01:40:54PM 25 on the steer axle in a pretrip inspection?

1 A. Based on industry standards and use,  
2 that all drivers don't check tire pressure on  
3 their steer tires every time they go out on a  
4 trip.

01:41:08PM

5 Q. Does that make it okay?

6 A. Sure. Particularly when your truck  
7 and tractor's been in the shop two weeks or two  
8 months before, just a couple days before where  
9 they check the pressure. Just like when we take  
10 our vehicles in, they check the pressure.

01:41:20PM

11 Q. Well, tires can lose pressure in  
12 operation in a matter of hours, correct?

13 A. If there's a flat.

14 Q. If there's no flat, there's no change  
15 in tire pressure during operation?

01:41:31PM

16 A. A tire might lose pressures, maybe a  
17 couple pounds a month, if you don't do anything  
18 to it.

19 Q. Is that your opinion?

01:41:39PM

20 A. Yeah.

21 Q. To a reasonable degree of certainty?

22 A. That's my opinion based on my  
23 knowledge and experience.

24 Q. Do you have any experience in testing  
25 inflation pressures on tires over time?

01:41:47PM

1 A. I don't.

2 Q. Any other basis for that opinion?

3 A. No.

4 Q. Have you ever filled a tractor tire  
01:41:59PM 5 with air?

6 A. I have.

7 Q. In what capacity?

8 A. When we were setting up our training  
9 school at Swift in Phoenix quite some number of  
01:42:10PM 10 years ago.

11 Q. Is this a one-time event?

12 A. One or two times, sure.

13 Q. So outside -- and I just want to be  
14 clear on this. Outside of the manuals we  
01:42:24PM 15 discussed, do you have any other -- strike that.

16 Is it your opinion that the fact that  
17 truck drivers don't use a tire gauge is an  
18 acceptable method to check tires in operation?

19 MR. KAPP: Object to the form.

01:42:45PM 20 THE WITNESS: No, sir.

21 BY MR. LIEBERMAN:

22 Q. So what is your opinion?

23 A. We were talking earlier about every  
24 pretrip inspection. It's not required or needed  
01:42:53PM 25 if you look and inspect your steer tires or any



1 other tires. They don't check tire pressure in  
2 22 tires every time they do an inspection.

3 Q. I'm not focused on 22 tires. I'm  
4 focused on two tires.

01:43:06PM

5 The steer axle tires are the most  
6 important tires on the truck, correct?

7 A. They are very important, correct.

8 Q. You called them critical, correct?

9 A. Correct.

01:43:12PM

10 Q. So wouldn't it be important to ensure  
11 that your steer tires are properly inflated?

12 A. True.

13 Q. And the only way to determine if your  
14 steer tires are properly inflated is to use a  
15 gauge, correct?

01:43:23PM

16 MR. KAPP: Form.

17 THE WITNESS: Using a gauge is a  
18 method to check them, but other things are taken  
19 into account when you have your truck in the  
20 shop to have tires repaired, balanced, and aired  
21 up. That doesn't mean you need to check the  
22 tire pressure the very next day on a pretrip  
23 inspection.

01:43:31PM

24 BY MR. LIEBERMAN:

01:43:42PM

25 Q. Before the subject crash on November

1 8, 2014, when was the last time that the tire  
2 pressures for the steer axle tires were checked  
3 in a shop?

4 A. I believe it was a couple days before.  
01:43:52PM 5 It may have been Sapp Brothers. They were  
6 balanced -- the tires were balanced. To balance  
7 a tire, you have to have the proper air pressure  
8 in the tires.

9 Q. And to what air pressure were the  
01:44:04PM 10 tires filled on that day that you're recalling?

11 A. Would have been based on the industry  
12 standards of, approximately cold, about 110  
13 pounds.

14 Q. Are you aware that Marks and Kehler  
01:44:12PM 15 testified they regularly filled their tires  
16 underneath 110 pounds?

17 A. Correct. That's because the industry  
18 standards tell drivers that they get their tires  
19 when they're up and rolling to 110 pounds when  
01:44:25PM 20 they're hot, and the difference can be at  
21 roughly 10 to 15 pounds with weight on it, based  
22 on the regulations.

23 Q. Industry standard is 110 psi cold,  
24 correct?

01:44:36PM 25 A. Correct.

1 Q. So why would it be acceptable for a  
2 driver to fill underneath 110 psi cold?

3 A. Because when you start running and you  
4 heat the tires up, the tires will start running  
01:44:50PM 5 at 110 pounds based on the load on the tires and  
6 based on the same information that the other  
7 experts have talked about based on load, load  
8 weight.

9 Q. Running tires is running hot, right?

01:45:03PM 10 A. Running tires will heat them up,  
11 correct.

12 Q. So the industry standard is not 110  
13 psi hot. The industry standard is 110 psi cold,  
14 correct?

01:45:14PM 15 A. That's --

16 MR. KAPP: Form.

17 THE WITNESS: That's what the data  
18 plate says. Drivers typically, when they're  
19 cold, will put about 100 to 105 pounds knowing  
01:45:25PM 20 that when they start running the maximum or the  
21 ultimate pressure in a tire would be about 110  
22 pounds pressure from wear.

23 BY MR. LIEBERMAN:

24 Q. How do you know that?

01:45:35PM 25 A. I know that because the regulations

1 inform drivers about that.

2 Q. The regulations inform drivers about  
3 underfilling tires because they're gonna be run  
4 hot? Where?

01:45:59PM 5 A. FMCSR 393.75.

6 Q. What does that say?

7 A. Says if a tire -- the inflation  
8 pressure of the tire has been increased by heat  
9 because of the recent operation of the vehicle,  
01:46:17PM 10 the cold inflation pressure shall be estimated  
11 by subtracting inflation buildup pressure factor  
12 known from Table 1.

13 Table 1 provides you with information  
14 running at, I think, 41 to 55 miles per hour  
01:46:39PM 15 without a load or load weight on it, the minimum  
16 inflation pressure doesn't build up very much,  
17 but at roughly 4,000 pounds -- in other words,  
18 if you've got 22 tires with 80,000 pounds on it,  
19 you're looking at around 3,600 pounds per  
01:46:54PM 20 tire -- the pressure increases between 10 and 15  
21 pounds. Drivers know that.

22 In fact, there was a recent study  
23 involving a histogram I think that Bridgestone  
24 made. This shows tires typically air them up at  
01:47:12PM 25 103, 104, 105 pounds knowing that tire will be

1 heated up to 110 pounds running pressure.

2 Q. You're looking at the guidelines to  
3 Regulation 393.75, correct?

4 A. Correct.

01:47:26PM

5 Q. First of all, we're going to have to  
6 mark that.

7 A. Okay.

8 Q. I understand this may be your only  
9 copy?

01:47:33PM

10 A. Well, I've got a whole book full of  
11 them.

12 MR. LIEBERMAN: Well, let's mark it  
13 first and then I'll ask some more questions.

14 MR. KAPP: Let me see it real quick.  
15 This whole thing, is that what you want?

01:47:56PM

16 What's this thing that's attached to  
17 it?

18 THE WITNESS: That's just a blowup of  
19 that other -- that's fine. It's just so I can  
20 read it better.

01:48:03PM

21 MR. FITZGERALD: Go ahead and put it  
22 in there then so we can read it better.

23 (Deposition Exhibit No. 246 marked for  
24 identification.)

01:48:32PM

25 BY MR. LIEBERMAN:

1 Q. I want to go over your interpretation  
2 of what this is saying.

3 First of all, it says, (1) "No motor  
4 vehicle shall be operated on a tire which has a  
01:48:56PM 5 cold inflation pressure less than that specified  
6 for the load being carried," correct?

7 A. Correct.

8 Q. So under that provision, the tires  
9 should be filled to 110 psi industry standard,  
01:49:08PM 10 right?

11 MR. KAPP: Object to the form.  
12 Misstates his testimony regarding load.

13 THE WITNESS: It depends on the load  
14 rating that goes into the next chapter with  
01:49:17PM 15 regard to the driver's ability to estimate the  
16 heat of the pressure by filling the tire less  
17 than that.

18 It may be subtracted from the, for  
19 example, recommended pressure of 110 pounds and  
01:49:31PM 20 that's when -- that's where when you run a tire  
21 hot, it will run up to the 110 pounds.

22 BY MR. LIEBERMAN:

23 Q. The next section says -- and you said  
24 chapter. Did you mean next section?

01:49:43PM 25 A. The next -- yeah.

1 Q. Okay. I just wanted to be clear we're  
2 talking about one area.

3 The next section says, "If the  
4 inflation pressure of the tire has been  
01:49:49PM 5 increased by heat because of the recent  
6 operation of the vehicle, the cold inflation  
7 pressure shall be estimated by subtracting the  
8 inflation buildup factor shown in Table 1."

9 Meaning that if the tire's being  
01:50:02PM 10 filled with air just after it was operated, you  
11 should adjust the tire pressures accordingly to  
12 Table 1, correct?

13 A. Well, I don't take it that way. I  
14 look at this as if you're starting off cold and  
01:50:14PM 15 you have 105 pounds of pressure in your tires,  
16 knowing that the optimum pressure is 110 --  
17 which is what drivers do -- you would inflate  
18 the tire less than that to make up for the  
19 buildup of pressure due to heat.

01:50:31PM 20 Q. If Kehler showed up at the FedEx yard  
21 in Salt Lake City ready to start the first shift  
22 of the week, truck has been sitting there, to  
23 what pressure should the steer axle tires have  
24 been inflated?

01:50:44PM 25 A. He says --

1 MR. KAPP: Object to the form.

2 THE WITNESS: He says 105 pounds.

3 BY MR. LIEBERMAN:

4 Q. I'm asking your opinion.

01:50:49PM

5 A. He would inflate that tire to where he  
6 started running it would be up to 110 pounds.

7 Q. So the answer is 110 pounds it should  
8 be inflated to, correct?

9 MR. KAPP: Object to the form.

01:50:58PM

10 THE WITNESS: Cold it would be 105  
11 pounds -- or 100 to 105 pounds, if he's got  
12 80,000 pounds on it to where that tire will run  
13 at 110 pounds.

14 BY MR. LIEBERMAN:

01:51:09PM

15 Q. But the vehicle hasn't been recently  
16 operated, so the tires aren't hot. So why  
17 should he subtract any pressure from the tire  
18 when he's checking it?

19 MR. KAPP: Same objection.

01:51:17PM

20 THE WITNESS: Because he knows when he  
21 starts running that the pressure will climb up  
22 to 110 pounds, which is the industry amount of  
23 pressure.

24 BY MR. LIEBERMAN:

01:51:27PM

25 Q. So this says if the inflation pressure



1 of the tire has been increased by heat because  
2 of the recent operation of the vehicle, then you  
3 should adjust accordingly to the table.

4 I'm saying there is no recent  
01:51:37PM 5 operation. The truck's been sitting there  
6 overnight. So why should he deduct any pounds  
7 per square inch from these tires?

8 MR. KAPP: Object to the form.

9 THE WITNESS: Because he'll know when  
01:51:47PM 10 he -- if he set it at 110 pounds, for example,  
11 it's gonna be 120 or 120-plus pounds. He knows  
12 that it runs optimal at 110 pounds, so he's  
13 gonna put roughly 105 pounds in it.

14 BY MR. LIEBERMAN:

01:51:59PM 15 Q. That's your understanding of what the  
16 manufacturer's recommendation of 110 pounds cold  
17 means, it means you adjust it?

18 MR. KAPP: Object to the form.

19 THE WITNESS: You estimate it.

01:52:07PM 20 MR. KAPP: Misstates the  
21 manufacturer's testimony.

22 THE WITNESS: That's what the drivers  
23 said. That's what the regulations say, you can  
24 estimate it.

01:52:16PM 25 BY MR. LIEBERMAN:

1 Q. Well, again, this isn't a regulation.  
2 This is a comment to a regulation. We were  
3 talking about your interpretation of that  
4 comment, correct?

01:52:23PM

5 A. I'm talking about my interpretation of  
6 this, correct.

7 Q. Does the PTDI manual discuss adjusting  
8 inflation pressures for potential heat?

9 A. No, only the regulations.

01:52:36PM

10 Q. Any of the other manuals we've  
11 discussed?

12 A. No. Just the federal regulations.

13 But based on my knowledge and  
14 experience of drivers and based on the study  
15 done by Bridgestone, drivers will typically run  
16 their tires lower than 110 pounds to run at 110  
17 pounds.

01:52:52PM

18 Q. So if drivers typically run their tire  
19 pressures underneath the recommended 110 pounds,  
20 does that make it okay?

01:53:07PM

21 MR. KAPP: Object to the form.

22 THE WITNESS: They just know that when  
23 they -- when the tires heat up, it will run at  
24 110, which is the optimum pressure to run tires.  
25 That's kind of an industry standard, 110 pounds.

01:53:18PM

1 BY MR. LIEBERMAN:

2 Q. Do you know whether or not tire  
3 manufacturers build in heat compliance into  
4 their pressure ratings?

01:53:26PM

5 A. I don't know, but I would hope they  
6 would be up to standard so the tire wouldn't  
7 blow up if it was less than 110 pounds.

8 Q. But you have no idea, correct?

9 A. I have no idea.

01:53:51PM

10 Q. Do you know what the vehicle placard  
11 on the subject tractor recommended the psi cold  
12 for the steer axle tires?

13 A. I saw a photograph that said -- the  
14 decal said or plate said 110 pounds cold  
15 pressure, I believe.

01:54:16PM

16 Q. What about the sidewall of the actual  
17 tire; do you know what it said?

18 A. I don't remember seeing a picture of  
19 that. I think there's some discussion about 110  
20 pounds maximum pressure.

01:54:29PM

21 Q. Are drivers supposed to consult with  
22 the placard before filling their tires with air?

23 A. Not typically, no. I mean, the  
24 placard's in the door, but that's what the  
25 initial tire recommendation is. They also know

01:54:43PM

1 that if you're supposed to put 110 pounds  
2 maximum pressure based on the sidewall of tire  
3 and the tire heats up, it can be less than that.  
4 So it runs at 110 pounds pressure.

01:54:58PM

5 Q. Again, your understanding of 110 pound  
6 recommended pressure is running pressure, not  
7 110 pounds cold as it says?

8 A. Running pressure. When the tire heats  
9 up.

01:55:29PM

10 (Deposition Exhibit No. 247 marked for  
11 identification.)

12 BY MR. LIEBERMAN:

01:55:52PM

13 Q. Sir, what I've marked as Exhibit 247  
14 is a Warner Truck Service Center record. For  
15 the record it is C&G-FXG-000093. It is Invoice  
16 No. 462990. That's at the top middle of the  
17 page. Kind of to the right in the column  
18 section it has an invoice date of June 2, 2014.

19 Are you following along with me thus  
20 far?

01:56:15PM

21 A. Yes.

22 Q. Slightly above and to the left of the  
23 invoice date, you'll see Unit No. 125417, which  
24 is the subject tractor in this case, correct?

01:56:19PM

25 A. Yes.

1 Q. Turn to the next page. There is a  
2 narrative section for what was performed on this  
3 vehicle. In the middle of the narrative section  
4 it says, "Checked tires, steer tires at 90 psi."

01:56:41PM

5 Do you see that?

6 A. I do.

7 Q. That's well below what the steer tires  
8 should have been set at; isn't that correct?

01:56:51PM

9 MR. KAPP: Object to the form. You're  
10 calling for speculation. Foundation, what this  
11 document says and what it means. He didn't  
12 write it.

13 BY MR. LIEBERMAN:

01:57:03PM

14 Q. It's well below the recommended  
15 pressures for the steer tires, correct?

16 MR. KAPP: Same objection.

01:57:17PM

17 THE WITNESS: That is below the  
18 recommend pressure, correct. And at the same  
19 time, when it left the shop, it would have been  
20 placed at the recommended pressure.

21 BY MR. LIEBERMAN:

22 Q. What do you mean by that?

01:57:27PM

23 A. Well, when a truck goes into the shop,  
24 and particularly they're checking tires, they  
25 don't leave it on something that they would

1 believe would be below pressure unless they  
2 thought it should have been at 90 to 95 psi.

3 Q. Have you ever worked at Warner Truck  
4 Center?

01:57:39PM

5 A. No, I haven't.

6 Q. Outside of this document that you have  
7 in front of you, do you have any idea what else  
8 Warner Truck Center may or may not have done to  
9 the tires?

01:57:46PM

10 A. Not specifically, no. Other than  
11 checking the tire pressure and doing work  
12 performed on the truck that they paid for.

13 Q. Why doesn't a driver want to operate  
14 this tractor with underinflated steer axle  
15 tires?

01:58:07PM

16 MR. KAPP: Object to the form.

17 THE WITNESS: What was that question  
18 again? Why doesn't he want to?

19 BY MR. LIEBERMAN:

01:58:13PM

20 Q. Why does he not want to. Let me ask  
21 it a better way. Thank you.

22 Why would a driver want his steer axle  
23 tires properly inflated?

24 MR. KAPP: Same.

01:58:23PM

25 BY MR. LIEBERMAN:

1 Q. Do you have an opinion on that?

2 A. Below what the maximum pressure is  
3 because it will gain pressure heat with a load  
4 on it up to recommended pressure.

01:58:34PM

5 Q. I'm not asking that. I'm asking why  
6 would a driver want to assure that the proper  
7 pressure exists in his steer axle tires? Do you  
8 have an opinion as to why a driver would want  
9 that?

01:58:49PM

10 A. So that it wouldn't eventually run  
11 flat sometime down the road or go substantially  
12 below the recommended pressure.

13 Q. Do you have any knowledge as to  
14 whether or not underinflation can lead to a tire  
15 failure?

01:59:02PM

16 MR. KAPP: Object to the form;  
17 foundation.

18 MR. LIEBERMAN: I'm asking if he has  
19 any knowledge.

01:59:08PM

20 THE WITNESS: Direct knowledge, no.  
21 BY MR. LIEBERMAN:

22 Q. Indirect?

23 A. Indirect knowledge, it could cause  
24 wear on the tire. Actually, it could cause  
25 greater or faster wear on the tire, which is why

01:59:18PM

1 drivers want to run them at 110 pounds.

2 MR. KAPP: And I listened to you and  
3 held off on my objection, but that's why I've  
4 been objecting to do you know questions.

01:59:33PM

5 So object to the form of the earlier  
6 question.

7 BY MR. LIEBERMAN:

8 Q. Is it a safety issue?

9 MR. KAPP: Same.

01:59:43PM

10 THE WITNESS: Depends on the results,  
11 I guess. If a tire runs flat, it can be a  
12 safety issue.

13 BY MR. LIEBERMAN:

01:59:52PM

14 Q. Well, you are the director of safety  
15 or holding numerous safety titles for a number  
16 of years for Swift Transportation.

17 Was tire inflation on steer tires  
18 important to you and Swift?

19 MR. KAPP: Same.

02:00:02PM

20 THE WITNESS: It was important,  
21 particularly to the shop, where they said you  
22 run them at 110 pounds hot.

23 BY MR. LIEBERMAN:

24 Q. That was Swift's position?

02:00:12PM

25 A. Yes.



1 Q. And did you ensure that Swift drivers  
2 followed that 110 psi hot, as you call it?

3 A. Well, I didn't ensure that, but that  
4 was the recommendation and training from the  
02:00:26PM 5 shop is the best wear you can get on a tire --  
6 since Swift pays for the tire -- is if you run  
7 them at 110 pounds. You don't run them over  
8 that. That's why it says 110 pounds max on the  
9 side of the tire.

02:00:42PM 10 Q. Explain that further to me. What do  
11 you mean by that?

12 A. Well, we talked a little bit earlier  
13 about the pounds of pressure you put in a tire,  
14 and it says 110 pounds max. And drivers would  
02:00:52PM 15 know that heat causes additional buildup of tire  
16 pressure in a tire.

17 That's why they put 105 pounds or less  
18 than 110 pounds to run it at optimal pressure at  
19 110 pounds, as shown by all the other drivers  
02:01:08PM 20 that were stopped in the tests that Bridgestone  
21 did.

22 Q. What tests are you speaking of?

23 A. I saw a test or some kind of  
24 evaluation of many, many trucks. And I saw a  
02:01:28PM 25 histogram on an inspection when they inspected

1 truck tires and pressures. The histogram shows  
2 that the vast majority of drivers had their  
3 tires set at around 103, 104, 105 pounds.

4 Q. Which is below the recommended 110  
5 psi, correct?

02:01:47PM

6 MR. KAPP: Object to form.

7 THE WITNESS: Maximum psi, that's  
8 correct.

9 BY MR. LIEBERMAN:

10 Q. So is it your opinion that because all  
11 these drivers are doing this, then the industry  
12 standard is to fill your tires underneath the  
13 maximum 110 psi? Do I understand that  
14 correctly?

02:01:55PM

15 MR. KAPP: Same.

02:02:08PM

16 THE WITNESS: Generally, yes. That is  
17 the -- what drivers understand when they're  
18 running their tires to get the maximum wear out  
19 of their tires is to fill them up less than 110  
20 pounds because with 80,000 pounds of weight on  
21 your truck, including your cargo, will build  
22 that pressure up to approximately 110 pounds.

02:02:19PM

23 BY MR. LIEBERMAN:

24 Q. And the only place that I can find  
25 that, in your opinion, is Exhibit 246, the

02:02:29PM

1 guidelines to 393.75?

2 A. Correct.

3 Q. That doesn't exist in any manual that  
4 you've ever seen?

02:02:48PM

5 A. Not that I can recall seeing. I rely  
6 on the regulations to inform drivers of how  
7 tires work.

02:03:13PM

8 Q. When was the last time, if you know,  
9 that the pressure of the steer axle tires on the  
10 subject tractor was checked with a gauge before  
11 the November 8th crash?

02:03:29PM

12 A. All I can tell you is when the truck  
13 was last at the shop, which was a couple days  
14 before the crash occurred. And I believe Sapp  
15 Brothers or ...

16 (Deposition Exhibit No. 248 marked for  
17 identification.)

02:03:56PM

18 MR. LIEBERMAN: For the record,  
19 Exhibit 248 is a Redbone Diesel invoice, Invoice  
20 No. 11575 from November 5, 2014. It is Bates  
21 labeled C&G-FXG-000134.

22 BY MR. LIEBERMAN:

23 Q. Is this the record you were  
24 referencing, Mr Ritchie?

02:04:09PM

25 A. Yes, Redbone Diesel.

1 Q. And this has to do with Unit 125417.

2 Do you see that there?

3 A. Yes.

4 Q. That's our subject unit?

02:04:18PM

5 A. Yes.

6 Q. And there's an entry in the  
7 description that says, Adjust brakes and tire  
8 pressures.

9 Do you see that?

02:04:24PM

10 A. Correct.

11 Q. It doesn't tell us what it was  
12 adjusted to, right?

13 A. That doesn't have a number on it, no.

14 Q. Do you know if Marks or Kehler put a  
15 gauge to the steer tires in between this record  
16 and the crash?

02:04:33PM

17 A. I believe Marks said he checked or  
18 gauged the tire a couple days before the crash.  
19 I don't know if it's before this or after this.

02:04:47PM

20 Q. Well, Marks testified that he did not  
21 check the tire pressures between this Redbone  
22 Diesel record and the crash.

23 MR. KAPP: Object to the form.

24 THE WITNESS: Okay.

02:04:56PM

25 BY MR. LIEBERMAN:

1 Q. With that in mind, the vehicle would  
2 have been sitting overnight at FedEx's yard and  
3 thus been ready to leave. So it would be part  
4 of the initial or first pretrip inspection that  
5 you talked about earlier. Okay?

02:05:10PM

6 A. Okay.

7 Q. Would you expect Kehler or Marks,  
8 whoever initiated that first vehicle inspection  
9 following this invoice, to inspect the tractor  
10 tires with the pressure gauge?

02:05:21PM

11 MR. KAPP: Form.

12 THE WITNESS: Actually, not  
13 necessarily, no. They just came out of the  
14 shop. They paid to have the shop -- the brakes  
15 and tire pressures checked.

02:05:29PM

16 BY MR. LIEBERMAN:

17 Q. Without knowing what the pressures  
18 were put to, that's acceptable for Marks and  
19 Kehler to get on the road without checking them?

02:05:37PM

20 A. If they did an inspection -- at least  
21 a visual inspection, that would be okay.

22 Q. And what is that opinion based upon?

23 A. I guess based upon expectations that  
24 if your truck just came out of the shop from  
25 checking tires, the tires should be okay to go.

02:05:51PM

1 Q. How long did the average trip take  
2 from Salt Lake to Connecticut for this  
3 particular tractor?

4 A. I would have to refer to their logs.  
02:06:18PM 5 They ran team pretty much day and night to get  
6 there. Two, three days. Something like that.

7 Q. During those two to three days, how  
8 often should the tire pressures be checked of  
9 the steer axle tires?

02:06:30PM 10 MR. FITZGERALD: With a gauge?

11 MR. LIEBERMAN: With a gauge. Thank  
12 you.

13 MR. KAPP: During the run?

14 THE WITNESS: During the run.

02:06:39PM 15 Whenever the drivers felt they -- it was  
16 necessary to check them.

17 BY MR. LIEBERMAN:

18 Q. So, in your opinion, there's no  
19 industry standard of how often somebody should  
02:06:46PM 20 check a tire pressure with a tire gauge but for  
21 the independent judgment of that driver?

22 A. Correct and being with the truck and  
23 running the truck the entire time. Because  
24 during that time they were doing in-trip  
02:07:02PM 25 inspections. Doesn't mean to check the -- gauge

1 the tires the entire trip.

2 Q. Can I find anywhere in the manuals or  
3 the regulations that tell me the frequency of  
4 checking the steer tire pressures with a tire  
02:07:38PM 5 gauge is dependent upon the driver's subjective  
6 opinion?

7 A. Not in those words, no.

8 Q. What do they say?

9 A. Well, 390 -- FMCSR 392.9 en route  
02:08:08PM 10 inspections, which they're constantly inspecting  
11 the vehicles and almost twice when they're  
12 changing drivers back and forth. They're both  
13 inspecting the vehicles together. We can talk  
14 about that in a minute.

02:08:22PM 15 So if one driver has 15 minutes on  
16 Line 4 and the other one has 10 minutes, you've  
17 got almost a half-hour inspection where both are  
18 checking the truck.

19 En route inspections on 392.9 says,  
02:08:37PM 20 according to this ruling, a driver may not  
21 operate a commercial motor vehicle unless the  
22 commercial motor vehicle's cargo is properly  
23 distributed and adequately secured, checking his  
24 load.

02:08:47PM 25 Commercial motor vehicle tailgate,

1 tailboard, doors, tarpaulins, spare tire and  
2 other equipment used in its operation and the  
3 means of fastening the commercial motor  
4 vehicle's cargo are secured.

02:08:59PM

5 The commercial motor vehicle's cargo  
6 or any other object does not obscure the  
7 driver's view ahead or to the right.

02:09:11PM

8 In other words, in-trip inspections  
9 are basically checking the truck, the cargo,  
10 making sure it's tied down and free from  
11 falling. That's the in-truck -- en route  
12 inspection I was talking about.

13 Q. Before every shift a driver has to  
14 perform a pretrip inspection, correct?

02:09:28PM

15 A. Correct.

16 Q. How does that differ from an in-trip  
17 inspection that you're talking about right now?

18 A. An in-trip inspection is basically a  
19 walk-around. We call them walk-arounds. Check  
20 your cargo.

02:09:38PM

21 Q. Like when you stop for food or stop  
22 for a shower?

23 A. Stop for a shower, stop for food, stop  
24 for fuel.

02:09:45PM

25 And these two drivers were



1 continuously -- in fact, they were checking,  
2 doing inspections twice as much as the sole  
3 drivers, we probably know, because they were  
4 trading off. And both these drivers were doing  
02:09:58PM 5 the same inspections at the same time, putting  
6 in Line 4 time.

7 Q. I've got to break that up.

8 First of all, these in-trip  
9 inspections, these walk-arounds, what evidence  
02:10:09PM 10 do you have that Kehler and Marks performed any  
11 of that?

12 A. Because they indicated them on their  
13 logs.

14 Q. Well, their logs are logging pretrip  
02:10:19PM 15 inspections?

16 A. No. They're also logging en route  
17 inspections.

18 Q. That's your opinion?

19 A. Yes.

02:10:25PM 20 Q. Are you familiar with the e-log  
21 system?

22 A. I am.

23 Q. The system FedEx uses?

24 A. Correct.

02:10:30PM 25 Q. What's it called?

1           A. It's the e-log system. In other  
2 words, what they do is they hit a macro when  
3 they do their inspections and then hit another  
4 macro when they've completed their inspections.

02:10:41PM

5           Q. I understand how it works.

6                   I'm asking you what it's called.

7           A. I can't recall the name. It's EF  
8 something. I forget.

9           Q. Have you ever used one of these  
10 systems?

02:10:51PM

11           A. I haven't used this. I've used -- I'm  
12 very familiar with the Qualcomm e-log system.

13           Q. How are you very familiar with the  
14 Qualcomm system?

02:11:00PM

15           A. Because that's the system that Swift  
16 uses.

17           Q. You realize Qualcomm's not the system  
18 FedEx uses, right?

19           A. Correct. It's a similar related e-log  
20 system.

02:11:08PM

21           Q. You know that even though you don't  
22 know what system FedEx uses?

23           MR. KAPP: He didn't say he didn't  
24 know what system it was.

02:11:16PM

25           THE WITNESS: I didn't know the name.

1 It's four letters. EF something system. It's  
2 an e-log system. Electronic logs are basically  
3 the same where they electronically keep drivers'  
4 hours of service.

02:11:26PM

5 BY MR. LIEBERMAN:

6 Q. And it's your opinion the e-log system  
7 is monitoring not only pretrip inspections but  
8 other inspections as well?

9 A. Correct.

02:11:33PM

10 Q. Well, we'll get to those logs  
11 momentarily.

12 You were trying to direct me -- at  
13 least this inquiry started with anywhere in the  
14 manual you're looking at, which is the PTDI  
15 manual, where it says that a driver only has to  
16 use a tire gauge when he feels he needs to on  
17 steer tire axles.

02:11:42PM

18 MR. KAPP: Object to form.

19 THE WITNESS: Well, it's subject to

02:11:53PM

20 the driver's experience in when he needs to  
21 check the tires. These guys have 20-plus years  
22 experience. They don't check the pressure in  
23 their tires every time they stop, four times a  
24 day. Tire would be flat before they got to the

02:12:07PM

25 other end of the trip if they just checked tires

1 and let air out of the tires.

2 BY MR. LIEBERMAN:

3 Q. Checking a tire can lead to --  
4 checking the air pressure of a tire with a tire  
02:12:16PM 5 gauge, in your opinion, can lead to a flat tire?

6 A. I was being a little facetious. It  
7 lets air out of the tires.

8 Q. How much air?

9 A. I don't know. Depends on how good  
02:12:27PM 10 your gauge is.

11 Q. Do you know what gauges, if any, Marks  
12 and Kehler had in the truck?

13 A. I don't. Only that they gauge their  
14 tires.

02:12:36PM 15 Q. I'm looking at what you attached to  
16 your report, specifically on page 38. It's a  
17 chapter out of the PTDI manual, Chapter 2.

18 A. Page 38?

19 Q. Yes, sir. Which is covering  
02:13:01PM 20 inspections.

21 A. Okay.

22 Q. Under Tire Inspection it reads,  
23 Whether you have driven for 20 -- or strike  
24 that.

02:13:05PM 25 Whether you have driven for 2 or 20

1 years, you already know that it is dangerous to  
2 drive with bad tires. During your inspection --  
3 and then a few bullet points down it says, If  
4 tire is low or flat, or any of the above, get it  
5 repaired.

02:13:18PM

6 A few bullet points down it says,  
7 Check inflation pressure with tire gauge,  
8 especially during CDL test.

9 Do you see that?

02:13:28PM

10 A. Correct.

11 Q. I don't see any other entry on here  
12 regarding the use or nonuse of a tire pressure  
13 gauge.

14 Do you see that?

02:13:35PM

15 A. Yes. This is covering -- again,  
16 similar to the CDL manuals -- the inspection  
17 tests that a driver would take to get a CDL  
18 test.

19 Q. So you --

02:13:47PM

20 A. And they check during that test to  
21 make sure you use the pressure gauge so you know  
22 how to check tire pressure.

23 Q. Well, this entry says, "Check  
24 inflation pressure with tire gauge especially  
25 during CDL test."

02:13:57PM

1 A. Correct.

2 Q. Is it your opinion that this entry is  
3 only applicable to the CDL test?

02:14:07PM

4 A. No, sir. What I'm saying is that you  
5 don't need to check your tire pressure every  
6 time you do a pretrip -- in-truck or pretrip  
7 inspection on a day-to-day basis particularly  
8 after the truck just came out of the shop two  
9 days before.

02:14:18PM

10 Q. What is the acronym ICD?

11 A. Where are you -- oh, right here? It's  
12 inflation, condition, and depth.

02:14:33PM

13 Q. Right. And I'm going to read this  
14 into the record. It says, When checking your  
15 tires, remember the acronym ICD, inflation,  
16 condition, and depth.

17 Aren't those the three things the  
18 driver should be checking during these pretrip  
19 inspections?

02:14:40PM

20 A. It would be.

21 Q. All right. And the only way to check  
22 the inflation of a tire to determine its  
23 pressure is with a tire gauge, correct?

02:14:47PM

24 MR. KAPP: Object to the form. It's  
25 been asked and answered.

1 THE WITNESS: As well as to look at  
2 the tire to see if it's low, flat, or bloating  
3 out the side.

4 BY MR. LIEBERMAN:

02:14:55PM

5 Q. But the only way to determine if it  
6 has 100 pounds or 100 pounds of pressure is with  
7 a tire gauge, right, sir?

8 A. That is correct.

9 MR. KAPP: Object to form.

02:15:00PM

10 BY MR. LIEBERMAN:

11 Q. And that's what the driver should be  
12 using, correct?

13 A. That's what the driver can use to  
14 check a tire pressure as well as looking at the  
15 tire.

02:15:06PM

16 Q. Does anywhere in this PTDI manual say  
17 what you just said, in the sense you don't have  
18 to use a tire gauge, you can just look at it?

19 A. It says listen for air leaks and look  
20 for bulges, could mean blowout. In other words,  
21 look for bulges in tires. That's looking at the  
22 tire.

02:15:16PM

23 Q. Right. It doesn't say you may do  
24 that instead of using a tire gauge, correct?

02:15:28PM

25 MR. KAPP: Object to the form,

1 argumentative.

2 THE WITNESS: That's correct. It  
3 doesn't say instead of.

4 BY MR. LIEBERMAN:

02:15:34PM

5 Q. It's just one of the bullet points  
6 listed that this manual recommends during a tire  
7 inspection, correct?

8 A. Correct.

9 MR. KAPP: Same.

02:15:47PM

10 (Deposition Exhibit No. 249 marked for  
11 identification.)

12 BY MR. LIEBERMAN:

02:16:35PM

13 Q. Sir, what I've marked as Exhibit 249  
14 is part of the Model Commercial Driver License  
15 Manual that was in existence at the time of the  
16 crash.

17 Are you familiar with this at all?

02:16:49PM

18 A. Yes. The model manual is kind of  
19 an -- it's an overall manual, not necessarily by  
20 states, but states have some guidelines in it  
21 other than this, but it's a general CDL manual,  
22 state CDL manual.

23 Q. States use it to model their own  
24 manuals off of, correct?

02:17:02PM

25 A. They can, yes. They make changes,



1 true.

2 Q. I have attached two sections. In the  
3 table of contents, which is the second page,  
4 Section 9 deals with hazardous materials,  
5 correct?

02:17:13PM

6 A. Correct.

7 Q. And if we turn to the next page, I've  
8 highlighted Section 9.6.9, at least on my copy,  
9 upper left-hand, last sentence of the first  
10 paragraph, "The only acceptable way to check  
11 tire pressure is to use tire pressure gauge."

02:17:25PM

12 MR. KAPP: You're reading from the  
13 hazardous materials section of this document; is  
14 that correct?

02:17:39PM

15 MR. LIEBERMAN: That's literally what  
16 I just said.

17 THE WITNESS: That's what it says when  
18 you're hauling hazardous materials.

19 BY MR. LIEBERMAN:

02:17:47PM

20 Q. Okay. Well, turn back to the table of  
21 contents, Section 11 covers what?

22 A. Pretrip vehicle inspection.

23 Q. Pretrip vehicle inspection, Chapter  
24 11. Turn to the last page of this document  
25 under 11.2.4 - Wheels. Under that you see Rims.

02:18:04PM

1 Under that you see Tires. And the third dash of  
2 the tires it says, "Tire inflation: Check for  
3 proper inflation by using a tire gauge."

4 Do you see that?

02:18:20PM

5 A. Correct.

6 Q. Now, that applies to pretrip  
7 inspections, correct?

8 A. That's correct.

9 MR. KAPP: Form.

02:18:24PM

10 BY MR. LIEBERMAN:

11 Q. So at least the model commercial  
12 drivers manual recommends the use of a tire  
13 gauge to check tire pressures during every  
14 pretrip inspection, correct?

02:18:33PM

15 A. It's a guide- --

16 MR. KAPP: Form.

17 THE WITNESS: It's a guideline,  
18 correct.

19 BY MR. LIEBERMAN:

02:18:38PM

20 Q. You mentioned that some states adopt  
21 some, some states change some. So let's take a  
22 look at Utah's.

23 (Deposition Exhibit No. 250 marked for  
24 identification.)

02:19:03PM

25 BY MR. LIEBERMAN:

1 Q. For convenience purposes, I'll jump to  
2 the point with this. Exhibit 250 is Utah's  
3 Commercial Driver License Handbook that was in  
4 existence at the time of the crash. And we look  
02:19:15PM 5 exactly at the section 11.2.4 under the pretrip  
6 inspection and it says, "Tire inflation: Check  
7 for proper inspection by using a tire gauge."

8 Did I read that correctly?

9 A. Correct.

02:19:25PM 10 Q. So the PTDI manual, the model manual,  
11 and Utah's manual recommend the use of a tire  
12 gauge for checking tire pressures during pretrip  
13 inspections, correct?

14 A. That's a general guideline, yes.

02:19:37PM 15 Q. And your opinion is that the drivers  
16 don't have to follow those three guidelines?

17 A. No, sir. My opinion is that's a  
18 general guideline. They don't need to check  
19 tire pressure every time they complete an  
02:19:48PM 20 inspection.

21 Q. Do you have any idea when either  
22 driver, Kehler or Marks, checked the tire  
23 pressures of the steer tires on the subject  
24 tractor at any point in time?

02:19:59PM 25 MR. KAPP: Asked and answered. Form.

1 THE WITNESS: Other than testimony a  
2 couple days before the crash by Mr. Marks, as I  
3 recall.

4 BY MR. LIEBERMAN:

02:20:05PM

5 Q. Well, at one point he testified that  
6 he checked the tire pressures with a gauge a few  
7 days before the crash and another point he  
8 testified that he did not.

02:20:14PM

9 Is there a reason that you considered  
10 part of his testimony but not the other part?

11 MR. KAPP: Form.

12 THE WITNESS: No, sir. All I remember  
13 is he checked it a couple few days before.

14 BY MR. LIEBERMAN:

02:20:28PM

15 Q. And to what pressures were the tires  
16 filled when Mr. Marks allegedly checked them a  
17 few days before the crash?

02:20:39PM

18 A. I don't know. He said he just checked  
19 the tires. Probably checked them to where when  
20 they got up to road speed, they'd be the max 110  
21 pounds.

22 Q. But you have no idea?

23 A. I have no idea. I wasn't there with  
24 him when he checked the pressure.

02:20:47PM

25 Q. Are you familiar with speed ratings of

1 tires?

2 A. What was that again?

3 Q. Are you familiar with speed ratings of  
4 tires?

02:21:03PM

5 A. Not very much, no.

6 Q. Do you have any opinion about speed  
7 ratings of tires in this case?

02:21:15PM

8 A. What I would understand generally  
9 about speed rating is that tires can spin at a  
10 certain rate before they fall apart, blow up  
11 maybe. I don't know. That's all I know.

12 Q. Are you just speculating right now?

13 A. I'm speculating.

02:21:23PM

14 Q. So you're not gonna offer any opinions  
15 about the speed rating of these tires in this  
16 case, are you?

17 A. I will not, no.

02:21:36PM

18 Q. Should the steer axle tires be of the  
19 same size on a tractor such as the one we're  
20 talking about today?

21 MR. KAPP: Form.

22 THE WITNESS: Same size?

23 BY MR. LIEBERMAN:

24 Q. Yes, sir.

02:21:39PM

25 A. Generally, yes, they should be the

1 same size.

2 Q. Were you aware that the steer tires on  
3 the subject tractor were not the same size?

4 MR. KAPP: Object to the form.

02:21:46PM

5 THE WITNESS: I was. I think one was  
6 175. The other one was 195. Both were 22-5's.  
7 Same rating, but different sizes.

8 BY MR. LIEBERMAN:

02:22:02PM

9 Q. Why would a driver want the same size  
10 tires on his steer axle?

11 MR. KAPP: Object to form.

12 BY MR. LIEBERMAN:

13 Q. If you know.

02:22:08PM

14 A. I would only speculate to have them  
15 wear evenly and wear properly. Put the  
16 Continental tire on because of the spare and a  
17 few days later the crash happened. So there's  
18 not much of a wear issue that's gonna happen.

02:22:25PM

19 Q. Is that your opinion? I mean, are you  
20 offering opinions about the wear of the tires?

21 A. No.

22 Q. Okay.

02:22:35PM

23 A. I'm just trying to be reasonable where  
24 it's not like it had hundreds of thousands of  
25 miles on it.

1 Q. Well, the Continental did.

2 A. Maybe about 50,000.

3 Q. Sure. But you're not gonna be opining  
4 as to what the wear on the Continental tire may  
5 mean, are you?

02:22:45PM

6 A. I'm not.

7 Q. Have you examined the Continental  
8 tire?

9 A. I have not.

02:22:49PM

10 Q. Are you aware other experts in this  
11 case have commented on the wear of the  
12 Continental tire?

13 A. Only what I've read.

14 Q. Do you have any opinions of your own  
15 in that respect?

02:22:59PM

16 A. I don't.

17 Q. Do you know when the subject  
18 Bridgestone tires were placed on the steer axle  
19 of the subject tractor?

02:23:26PM

20 A. The new Bridgestone tires, about -- a  
21 little over two months before the crash, as I  
22 recall.

23 Q. Do you know how many miles were put on  
24 at least the left front steer tire before the  
25 crash?

02:23:36PM

1           A. I don't recall reading that or knowing  
2 that.

3           Q. I ask because on a page 13 of your  
4 report you state that the new Bridgestone tires  
02:23:45PM 5 were placed on the tractor steer axle on August  
6 26, 2014, approximately three months before the  
7 blowout. Their condition should have been  
8 excellent or at least above average.

9           And I'm trying to get a sense of the  
02:23:56PM 10 basis for that opinion.

11           A. The basis for that opinion would be  
12 that steer tires -- you can run a hundred plus  
13 thousand miles on a steer tire, and if it only  
14 had -- if it was a brand-new tire and it  
02:24:11PM 15 was only -- had been in operation for a couple  
16 months, two months and ten days or so, it would  
17 have been below the average wear of a tire.

18           Q. But you don't know how many miles were  
19 put on the subject tire, do you?

02:24:24PM 20           A. I don't, but it would be below the  
21 average miles as far as the wear of a tire would  
22 be.

23           Q. What's the basis for your opinion that  
24 you can operate steer tires above 100,000  
02:24:35PM 25 miles -- or that they last above 100,000 miles?



1 A. Just basically what I've known in the  
2 industry about the time it takes to change a  
3 tire out, about 100,000 miles.

02:24:48PM

4 Q. Can you be any more specific about the  
5 basis for that opinion?

6 A. No. That's just what I've learned and  
7 heard during the last 25 years.

8 Q. Did you ever oversee maintenance  
9 operations at Swift?

02:24:59PM

10 A. I did not.

11 Q. You were limited to safety, right?

12 A. Correct.

13 Q. Was there ever a policy while you were  
14 at Swift about a mileage cap for steer axle  
15 tires?

02:25:10PM

16 A. I don't know. The shop may have had  
17 one, but I don't recall reading that. They just  
18 have to look at the tire. When it's gauged down  
19 to, I think, 2/32 it's time to change the tire  
20 out. That would be around 100,000-plus miles.

02:25:21PM

21 Q. And, of course, wear on the tire is  
22 gonna be influenced not just by the mileage put  
23 on a tire, but the alignment of the tire itself,  
24 correct?

02:25:34PM

25 A. That would affect it, yes.

1 Q. Okay. The driving conditions that  
2 occur?

3 A. That would have something to do with  
4 it, yes.

02:25:41PM

5 Q. The road surfaces?

6 A. Correct.

7 Q. Any potential impacts with curbs or  
8 other objects?

02:25:49PM

9 A. That would affect the life of the tire  
10 if it's damaged, yes.

11 Q. How the driver operates the vehicle?

12 A. Correct.

13 Q. Do you know what the condition of the  
14 Bridgestone tires -- or the subject Bridgestone  
15 tire was at the time of the crash?

02:26:04PM

16 A. I don't. Condition as far as overall  
17 condition?

18 Q. Yes.

19 A. I don't know.

02:26:13PM

20 Q. Have you ever examined the tire?

21 A. I did not.

22 Q. Have you ever seen it?

23 A. I've never seen it.

02:26:34PM

24 MR. KAPP: Are we at a good point for  
25 a break?

1 THE WITNESS: I can keep going.

2 Depends on you guys.

3 MR. KAPP: Actually, I take that back,  
4 because it is 2:26 and if I'm gonna get out of  
5 here probably should keep going.

02:26:48PM

6 (Deposition Exhibit No. 251 marked for  
7 identification.)

8 BY MR. LIEBERMAN:

9 Q. Sir, what I've marked as Exhibit 251  
10 is a small collection of the Driver's Logs for  
11 Brian Kehler that run from October 30, 2014,  
12 through the day of the crash, November 8, 2014.

02:27:37PM

13 Have you reviewed these previously?

14 A. I have.

15 Q. I have some pointed questions with  
16 respect to each page if we can go through it.

02:27:50PM

17 A. Okay.

18 Q. First of all, what does PTI stand for?

19 A. Pretrip inspection.

20 Q. And the first page, I see that Brian  
21 Kehler went on duty at 2:04 a.m. He initiated a  
22 pretrip inspection at 2:05 a.m., and the  
23 inspection was completed by 2:09.

02:28:01PM

24 Do you see that?

25 A. I do.

02:28:16PM

1 Q. That's four minutes for a pretrip  
2 inspection, correct?

3 A. Correct. That's four minutes between  
4 he hit -- between the time he hit his pretrip  
02:28:25PM 5 inspection and when he signed off that he'd  
6 completed his pretrip inspection.

7 Q. Are you saying that Mr. Kehler may  
8 have doctored his logs?

9 A. No. It has nothing to do with --  
02:28:37PM 10 well, no. Sometimes drivers will sometimes be a  
11 little lazy when they hit their -- the button to  
12 start logging and then end it quickly, but we  
13 can keep going.

14 Q. Do you have any evidence that Kehler  
02:28:54PM 15 was lazy in logging his information?

16 A. I don't.

17 Q. Aren't the drivers expected to  
18 honestly log the information into their system?

19 A. That's correct. They're supposed to  
02:29:02PM 20 honestly log their data.

21 Q. So if we take this record as an honest  
22 record, we have a pretrip that lasts four  
23 minutes, which is roughly a fourth of the  
24 recommended time that you stated was required to  
02:29:12PM 25 do it, correct?

1 A. Correct, on this log, yes.

2 Q. That would not be a sufficient  
3 inspection, correct?

02:29:22PM

4 A. It may not be, unless the other driver  
5 was assisting him in the same inspection.

6 Q. What if that driver was in the sleeper  
7 berth at that time?

8 A. Then he wouldn't be assisting in the  
9 inspection.

02:29:49PM

10 Q. That's right.

11 And is it common for tandem drivers to  
12 be assisting each other in pretrip inspections?

02:30:00PM

13 A. All the time, all the time. In other  
14 words, you have two drivers, particularly as a  
15 team, they're both gonna be driving that vehicle  
16 during that next two to three, sometimes four  
17 days.

02:30:11PM

18 And so both drivers will help out on  
19 doing the inspections on all the trailers and  
20 the equipment, tires, and everything. That's  
21 common.

22 Q. What evidence do you have, if any,  
23 that Marks and Kehler were jointly performing  
24 these pretrip inspections?

02:30:20PM

25 A. Well, I've gone through both logs,

1 both sets of logs, and I can show you where they  
2 were doing pretrip inspections at the same time.

3 Q. Well, let's go through mine first.

4 So you're saying your logbook is gonna  
02:30:35PM 5 have or your index is gonna have examples of  
6 what I just asked?

7 A. Correct.

8 Q. Okay. Let's go through mine first,  
9 then we'll jump into yours.

02:30:40PM 10 A. Okay.

11 Q. Let's turn to the next page. This is  
12 Brian Kehler's Driver's Log from October 31,  
13 2014. If we look at the remarks, it looks like  
14 he went on duty at 1:16 a.m., he started a  
02:30:58PM 15 pretrip inspection in Ottawa, Illinois, at 1:17  
16 and completed that inspection of four units by  
17 1:18.

18 That's a one-minute inspection,  
19 correct?

02:31:08PM 20 A. Correct.

21 Q. So unless -- that's an incomplete  
22 inspection, correct?

23 A. Based on -- yes, that would be  
24 incomplete, four minutes for a pretrip  
02:31:19PM 25 inspection.

1 Q. Unless we have a correlating 14-minute  
2 plus inspection at the same time by Mr. Marks,  
3 in your opinion, correct?

4 A. Correct.

02:31:28PM

5 Q. Let's go to the next one. Brian  
6 Kehler, this is the driver log from November 1,  
7 2014. I see he went on duty at 11:42 a.m. He  
8 started a pretrip inspection in North Salt Lake  
9 at 11:43, and he completed that inspection of  
10 four units one minute later.

02:31:49PM

11 Do you see that as well?

12 A. That's what he said, yes.

13 Q. And, again, that would be an  
14 insufficient inspection, correct?

02:31:59PM

15 A. If that's all the time the inspection  
16 took, that would be correct.

17 Q. Let's turn the page to November 2,  
18 2014. He goes on duty at 11:25 a.m. He does a  
19 PTI, a pretrip -- or initially it's a PTI in Elm  
20 Creek, Nebraska, at 11:26 and completes that  
21 inspection of four units two minutes later.

02:32:22PM

22 That, likewise, would be an incomplete  
23 inspection, correct?

24 A. If that's all the time he spent on the  
25 correction of -- on the inspection, it would be.

02:32:31PM

1 Q. And if we look further down in this  
2 record, it's in military time, 22:50, we have  
3 drop and fuel and PTI in North Salt Lake. And  
4 zero minutes later, he's off duty.

02:32:50PM

5 Would that be a zero-minute PTI?

6 A. That would be Mr. Kehler hitting the  
7 macro button at the same time he finished his  
8 inspection and went off duty.

02:33:02PM

9 Q. Was FedEx monitoring these Driver's  
10 Logs in any capacity?

11 A. No, not at the time they're doing it.

12 Q. Do they ever audit them?

13 MR. KAPP: Form, asked and answered.

02:33:10PM

14 THE WITNESS: Not at the time they're  
15 doing the logs. They don't even have this  
16 information until some time after the log has  
17 been done.

18 BY MR. LIEBERMAN:

02:33:16PM

19 Q. How do you know it's not an immediate  
20 uplink?

21 A. Oh, it could be an immediate uplink,  
22 but they don't audit every log, every immediate  
23 uplink.

24 Q. When does FedEx audit?

02:33:25PM

25 A. I don't know.



1 Q. You don't know if they do, correct?

2 A. I've heard by testimony from the  
3 terminal manager they do audit logs. They get  
4 log reports, e-log reports.

02:33:37PM

5 Q. Does CLR audit these logs?

6 A. I don't know.

7 Q. If these logs were audited and FedEx  
8 saw that inspections were being allegedly  
9 completed in a minute or two, what should FedEx,  
10 if anything, have done?

02:33:47PM

11 MR. KAPP: Object to the form.

12 THE WITNESS: Well, generally what I  
13 would tell a driver to do is, say, when you  
14 start your pretrip inspection, you hit your  
15 macro button and then when you're done with your  
16 inspection. You hit your macro button when  
17 you're completed, not at the same time when  
18 you're done with your inspection.

02:33:56PM

19 BY MR. LIEBERMAN:

20 Q. So you believe that these one-minute  
21 and two-minute entries are a result of an  
22 improper input by the driver?

02:34:05PM

23 A. They could be. If he does an  
24 inspection, it couldn't be done -- even a  
25 walk-around couldn't be done in two minutes. He

02:34:16PM

1 could barely get out of the truck in two  
2 minutes. That's why --

3 Q. I've met him. I know.

02:34:26PM

4 A. That's why it could be an error when  
5 he's hitting the keys when he gets done with his  
6 inspection and marks them.

02:34:41PM

7 He could also be assisting Mr. Marks,  
8 since this is Mr. Kehler's log, in the  
9 inspection when Mr. Marks is spending more time  
10 on his inspection, that we'll look at in a  
11 minute.

12 Q. Right.

13 Did you read any testimony that  
14 supports your statement?

02:34:51PM

15 A. I didn't read any testimony, no. I  
16 just know basically how the e-log system works.  
17 It's like hitting a key on a computer.

02:35:02PM

18 Q. So if Mr. Marks testified that he  
19 never assisted Mr. Kehler in these pretrip  
20 inspections, would that change your opinion at  
21 all?

02:35:13PM

22 A. I guess if he says he never assisted  
23 Mr. Marks (sic), I would have to believe him. I  
24 don't know. It doesn't show that on his logs --  
25 or both their logs.

1 Q. Okay. Turn the page, November 4,  
2 they're off duty. There's no records. This is  
3 where I get a little confused.

4 Looking at page November 5, 2014. It  
02:35:43PM 5 appears that he did a hook and PTI in North Salt  
6 Lake starting at 13:28. He inspected upwards of  
7 seven units by 14:01.

8 So that is approximately a 30-minute  
9 inspection -- pretrip inspection for upwards of  
02:36:08PM 10 seven different units.

11 A. To my point, he's sitting in the truck  
12 and he's typing all of his equipment in that  
13 he's just inspected.

14 Q. You don't know if he was doing that,  
02:36:17PM 15 correct?

16 A. I know based on e-log systems and  
17 drivers, that's exactly what he did, but I don't  
18 know for certain.

19 Q. You're speculating as to how these  
02:36:27PM 20 entries were put in, because you understand that  
21 an inspection of that caliber couldn't have  
22 possibly been completed in 30 minutes  
23 effectively, correct?

24 A. Correct. And that what drivers will  
02:36:37PM 25 do is they'll complete their inspections and get

1 in and type the trailers in that they've just  
2 inspected.

3 Q. So there's two competing theories,  
4 right? One is that Mr. Kehler is, in fact,  
02:36:48PM 5 performing one-minute and four-minute  
6 inspections and he's not doing a thorough job.  
7 That's one theory, right?

8 A. Or he's --

9 Q. Hold on. Right?

02:36:55PM 10 A. Right.

11 MR. KAPP: Hey --

12 BY MR. LIEBERMAN:

13 Q. And, two, your theory that Mr. Kehler  
14 is somehow incorrectly logging the information  
02:37:04PM 15 into the e-log system?

16 A. Correct. And that's based on the fact  
17 that you have one, two, three, four, five  
18 trailers inspected within a -- less than a  
19 minute.

02:37:15PM 20 Q. Right.

21 A. Which tells me that's about the time  
22 it would take to type one trailer number in.

23 Q. It can also tell you he didn't do it,  
24 correct?

02:37:23PM 25 MR. KAPP: Object to the form.

1 THE WITNESS: I guess. I don't know.

2 BY MR. LIEBERMAN:

3 Q. Because you don't know what he did or  
4 did not do, correct?

02:37:32PM

5 A. I don't know what he did, but that's  
6 how drivers would do inspections.

7 Q. But you don't know how Mr. Marks and  
8 Mr. Kehler did the inspections, correct?

02:37:39PM

9 MR. KAPP: Object to the form. Asked  
10 and answered over and over and over again.

11 THE WITNESS: That's correct. I  
12 wasn't there. I didn't see them do the  
13 inspection. That would be absolutely correct.

14 BY MR. LIEBERMAN:

02:37:56PM

15 Q. Turn the page. The Driver's Log from  
16 November 6, 2014, for Brian Kehler, we have an  
17 on duty at 10:58 a.m. -- I'm sorry. Strike  
18 that.

02:38:11PM

19 An on duty at 10:57. Initiates a PTI  
20 in Ottawa at 10:58 and completes it at 11:05.  
21 That's a seven-minute inspection for a tractor,  
22 a dolly, and two trailers, correct?

23 A. That's what the time is, yes.

02:38:23PM

24 Q. And, again, if that's accurate, that  
25 would be an insufficient and incomplete

1 inspection?

2 MR. KAPP: Same.

3 THE WITNESS: It could be. It could  
4 be. Seven minutes, you could do a walk-around  
5 in eight minutes. I'd have to look at  
6 Mr. Marks' --

7 BY MR. LIEBERMAN:

8 Q. Well, this is a pretrip inspection.  
9 This isn't one of your in-service walk-arounds.  
10 It's a PTI.

11 A. The macros on the e-logs only have  
12 pretrip inspections. They don't have in-trip  
13 inspection keys. Everything's a PTI.

14 Q. How do you know that?

15 A. That's typically how the e-logs work,  
16 pretrip inspection. They don't have a key that  
17 says walk-around. They don't have a key that  
18 says in-trip inspection.

19 Q. Do you analyze FedEx's e-log system?

20 A. I didn't analyze them, no. I just  
21 typically --

22 Q. You can't even recall the name of it?

23 MR. KAPP: Will you let him finish,  
24 Chad? You are cutting him off and you're  
25 getting argumentative.

1 THE WITNESS: Well, I can learn what  
2 the e-log system is, but they're all generally  
3 the same. They have a keyboard, you input your  
4 time, whatever you're on, line 1, line 2,  
02:39:20PM 5 line 3, and that's just how it works. And it  
6 records the time you hit the key on one end and  
7 you hit the key on the other end.

8 BY MR. LIEBERMAN:

9 Q. Turn the page to November 8, 2014.

02:39:32PM 10 This is the day of the crash. It's Brian  
11 Kehler's Driver's Log.

12 A. You're on 7, November 7?

13 Q. I went to November 8.

14 This is the day of the crash. He goes  
02:39:47PM 15 on duty at 11:12 a.m. He starts a PTI North  
16 Platte, Nebraska at 11:12 a.m., and he completes  
17 his inspection at 11:13.

18 So that is a one-minute pretrip  
19 inspection, correct?

02:39:58PM 20 A. Correct.

21 Q. And that would be insufficient, if  
22 accurate, correct?

23 A. If accurate, that wouldn't be enough  
24 to even walk around the truck.

02:40:05PM 25 Q. And this is the only inspection Brian

1 Kehler performed on the date of the crash before  
2 the crash occurred, correct?

3 A. That Brian Kehler performed, correct.

4 (Deposition Exhibit No. 252 marked for  
5 identification.)

02:40:52PM

6 BY MR. LIEBERMAN:

7 Q. Sir, what I've marked as 252 are  
8 Steven Marks' Driver's Logs over the same period  
9 of time, October 30th to the day of the crash,  
10 November 8.

02:41:02PM

11 Suffice to say, if there are  
12 one-minute PTIs noted in here and, in fact, the  
13 records are accurate, those would be  
14 insufficient as well, correct?

15 A. Based on the time that they punched  
16 in, that would be correct.

02:41:18PM

17 Q. And let's turn your attention to  
18 streamline this to -- let's go to the last page.

19 A. Last page of Marks?

20 Q. Yes, please.

02:41:46PM

21 This is a Driver's Log for Steven  
22 Marks on November 8, 2014, the day of the crash.  
23 If you look at his log, he went on duty at  
24 12:27 a.m., and he completed an inspection two  
25 minutes later.

02:42:09PM



1 If that's accurate, that's an  
2 insufficient and incomplete inspection; isn't  
3 that correct?

4 A. You're looking at which one?

02:42:26PM

5 Q. The first entry at midnight is sleeper  
6 berth.

7 A. Correct.

8 Q. The next entry is on duty at 27, being  
9 12:27 a.m.

02:42:34PM

10 A. Correct.

11 Q. And then the next entry is 12:29 that  
12 has an inspection completed entered.

13 A. Correct.

14 Q. So he completed some inspection in two  
15 minutes?

02:42:45PM

16 A. Correct.

17 Q. And if that was a pretrip  
18 inspection -- because, again, he is starting his  
19 shift going from the sleeper berth to on duty --  
20 that would be an insufficient pretrip  
21 inspection?

02:42:53PM

22 MR. KAPP: Form.

23 THE WITNESS: Based on the time he  
24 punched in, that would not be sufficient time  
25 for an inspection, unless he was assisted by

02:43:06PM

1 Mr. Kehler.

2 BY MR. LIEBERMAN:

3 Q. At 6:54 he skipped an inspection.

4 Have you ever seen that before?

02:43:16PM

5 A. I have on e-log systems. What they'll  
6 do is they'll tell you when you start off, you  
7 forgot to do an inspection. It electronically  
8 tells you that.

9 Q. So Mr. Marks forgot to do an

02:43:27PM

10 inspection and skipped it?

11 A. He didn't -- that doesn't say he

12 forgot to do the inspection. It says he didn't

13 hit the macro key to say he did an inspection.

14 He just started moving without hitting the macro

02:43:38PM

15 key.

16 Q. Your understanding is the computer

17 systems allows you to do that, to go on duty and

18 operate the vehicle without confirming that

19 you've completed a pretrip inspection?

02:43:49PM

20 A. No. Based on the inspection, it says

21 you skipped the inspection. That doesn't mean

22 he didn't do an inspection. He forgot to hit

23 the macro key before he started out.

24 Q. How do you know he forgot to hit the

02:44:01PM

25 macro key?

1 A. Because it says he skipped the  
2 inspection.

3 Q. He could have skipped it too, right?

4 A. He could have skipped it, yes. He may  
5 not have done one.

02:44:07PM

6 Q. That's all the questions I have on  
7 those two. You have something that you brought  
8 with you that could help explain some of your  
9 opinions with respect to the Driver's Logs,  
10 correct?

02:44:24PM

11 A. Correct.

12 MR. LIEBERMAN: First of all, let's  
13 mark it before I forget to do that.

14 (Deposition Exhibit No. 253 marked for  
15 identification.)

02:45:04PM

16 BY MR. LIEBERMAN:

17 Q. What's been marked as Exhibit 253 is  
18 the Daily Log slash Inspection Review that you  
19 prepared.

02:45:12PM

20 When did you prepare this?

21 A. I prepared that, I think, about a week  
22 ago after I started reviewing further  
23 depositions that were sent to me. It would have  
24 been sometime after March 3, around March 3.

02:45:30PM

25 Q. And it appears you have a tabulation

1 on the first two pages, that we can go through  
2 in a second, and then a collection of Driver's  
3 Logs, both some of the handwritten and the  
4 electronic logs.

02:45:42PM

5 Is that a fair recap of what this  
6 packet is?

7 A. Correct.

8 Q. Are these all the Driver's Logs that  
9 you have?

02:45:47PM

10 A. I think they might be all of the  
11 e-logs that I had.

12 Q. I will give this back to you, sir.  
13 And if we can together, can you explain to me  
14 what it is you're trying to tell me with this  
15 two-page document?

02:46:01PM

16 A. Sure. What I've done is I was  
17 initially sent logs for two days on both drivers  
18 to show what their handwritten log pattern was,  
19 and because, again, hitting macros improperly or  
02:46:20PM 20 not at the right time could affect your logging.

21 And I'm going back to 9/6 and 9/7 on  
22 both Kehler and Marks.

23 Q. Okay.

24 A. And it shows that when they're doing  
02:46:37PM 25 their handwritten logs, when they're changing

1 over from sleeper berth or changing drivers,  
2 they will typically do 15 minutes or more on an  
3 inspection on their handwritten log.

4 And on these two particular days, on  
02:46:53PM 5 the 6th and on the 7th, on the 6th two of the  
6 inspections were done by both drivers. On the  
7 7th four of the inspections were done by two  
8 drivers.

9 MR. FITZGERALD: I'm sorry --

02:47:08PM 10 THE WITNESS: Four of the inspections.

11 MR. FITZGERALD: 7th of what?

12 MR. LIEBERMAN: He was asking for a  
13 date.

14 THE WITNESS: 9/6 and 9/7. I'm sorry.

02:47:15PM 15 And these are handwritten logs that I  
16 happen to have been sent from Loyd or something.  
17 And I have those on the tally sheet.

18 The next logs include both drivers  
19 starting from 10/8 that go through the date of  
02:47:34PM 20 the crash, on 10/8 of -- 11/8, I'm sorry. So  
21 one month. One month worth of logs.

22 And to kind of make this simple, I've  
23 highlighted the inspections that we -- some of  
24 those we just went through in yellow on each of  
02:47:58PM 25 the logs.

1 And then what I've done is I've taken  
2 and highlighted orange the inspections that they  
3 completed together. So yellow is each  
4 individual driver's inspection on logs we just  
02:48:15PM 5 happen to have gone through. And then I have  
6 the times that both of them complete an  
7 inspection at the same period with their times  
8 involved.

9 I don't know if we should stop there  
02:48:28PM 10 or go through my tally here or go through each  
11 sheet log. How do you want to do it?

12 BY MR. LIEBERMAN:

13 Q. Let's go through your tally.

14 A. Okay. The tally shows on the first  
02:48:47PM 15 day, 9/6, three inspections were completed.

16 What I've done is I've done the date, the driver  
17 who did the inspecting, the total number of  
18 inspections that each of those drivers  
19 completed, a total for both drivers and then any  
02:49:05PM 20 duplicates that were done by drivers at the same  
21 period of time.

22 And as I went through all these  
23 inspections -- by the way, I didn't use days off  
24 duty, because those would not be added in  
02:49:21PM 25 figures. And what I try to do is get a number

1 of inspections -- the average number of  
2 inspections that these drivers did during their  
3 team trips, and it's no coincidence that it came  
4 out to be four inspections a day. Typically a  
5 sole driver would be doing two inspections per  
6 day.

02:49:37PM

7 But the duplicates came out to be --  
8 of all the inspections, about half of the  
9 inspections were being done together. And that  
10 would be the orange markings that I would have  
11 on the logs. So you have to kind of break them  
12 up.

02:49:52PM

13 Q. Yeah, I see.

14 A. And I've done that based on my  
15 understanding and knowledge that drivers -- team  
16 drivers will do inspections at the same time.

02:50:20PM

17 Q. Let me ask you a question about this  
18 methodology here, because I'm looking at  
19 Kehler's log from October 9 and Marks' log from  
20 October 9. I'm just taking the one right in the  
21 middle that you have highlighted in orange. And  
22 that looks to be right around 12:30. I know  
23 you're looking at it upside down.

02:50:48PM

24 A. Correct.

25 Q. Now, if I look to the 12:30 Driver's

02:51:01PM

1 Log for each of these men, on the Kehler log I  
2 see a 12:32 entry for a PTI and I see an 11:56  
3 fuel/PTI entry for Marks.

4 Am I following along with what you did  
02:51:25PM 5 correctly right now?

6 A. Correct.

7 Q. And so you're saying that these were  
8 then done together?

9 A. Let's see. Noon -- let me look here.

02:51:47PM 10 It's about a half hour apart. So you have two  
11 drivers up and they're both doing inspections  
12 around the same time, within 15 minutes apart.

13 So we have one inspection here for  
14 15 minutes and we have another inspection for  
02:52:03PM 15 15 minutes during the same stop.

16 Q. Okay. Those are --

17 A. So we have -- they can be doing  
18 inspections at the same time or one could be  
19 doing an inspection when the other one does his  
02:52:14PM 20 inspection.

21 Q. Doesn't each driver have to complete  
22 his own full pretrip inspection?

23 A. You can have two drivers inspect a  
24 truck together. In other words, technically,  
02:52:28PM 25 yes. Technically, yes. Or you can have two



1 people walking the truck at the same time. It  
2 depends on their system.

3 They're both gonna be -- one just came  
4 off the truck and another one's going on the  
5 truck. They're running team.

02:52:40PM

6 Q. You testified earlier that a proper  
7 pretrip inspection takes between 15 and 25  
8 minutes. Am I understanding your testimony  
9 correctly -- strike that.

02:52:52PM

10 Is it your opinion that that  
11 15 minutes could be an accumulation by two  
12 different people?

13 A. Well, yeah. Sometimes they'll do  
14 that, but you have two drivers doing a pretrip  
15 inspection of about 15 minutes.

02:53:05PM

16 Q. In that example we're talking about?

17 A. Yes, in this example.

18 Q. Right. In other words, you know that  
19 there's pretrip inspections of a minute to two  
20 minutes listed in the records, right?

02:53:14PM

21 A. Yes. I think there are some, but  
22 we've gone through some that have been  
23 eliminated because they're doing inspections at  
24 the same time. And it depends on when they hit  
25 the macro key, after the inspection or before

02:53:29PM

1 the inspection.

2 Q. Okay. I guess my question, again, is:  
3 Is it appropriate for a pretrip inspection to be  
4 jointly completed by two people?

02:53:41PM

5 A. I think so, yes.

6 Q. What is that based upon? What's that  
7 opinion based upon?

02:53:51PM

8 A. Based upon what drivers typically do.  
9 One driver will fill out the log, as he did  
10 here, and work 15 minutes. The other one will  
11 do another 15 minutes. You've got a half hour's  
12 worth of inspection going on at the same stop.

02:54:08PM

13 Q. Do you have any evidence that one  
14 driver such as Marks was filling out the driver  
15 vehicle inspection report for Kehler at any  
16 point?

02:54:20PM

17 A. No. He wasn't filling out an  
18 inspection report. They were completing an  
19 inspection. They didn't fill out a report or  
20 there was no -- there may not have been no  
21 violations to report -- not violations, but  
22 mechanical defects to report on a report.

02:54:33PM

23 They're both doing in-trip  
24 inspections, running at the same time. One's  
25 coming off the truck, getting out of the

1 sleeper, doing his inspection. The other one's  
2 doing his inspection at the same time.

3 Q. Do you have any evidence that they've  
4 ever communicated with respect to this process?

02:54:46PM

5 A. You mean communicated while they're  
6 doing inspections?

7 Q. Sure.

02:54:56PM

8 A. Well, I don't imagine they would just  
9 be out at the truck as a team walking around not  
10 communicating with each other, just inspecting  
11 trucks.

02:55:06PM

12 Q. We keep going back to this that you  
13 don't imagine. And I need to know if you have  
14 any specific information that they were, in  
15 fact, doing tandem inspections on this vehicle.

16 A. Obviously not. I was not there on  
17 these particular days when they were both doing  
18 inspections on the same day. I wasn't there.

19 Q. Sure.

02:55:17PM

20 The basis for your opinion that these  
21 joint inspections were occurring was simply a  
22 look at the records themselves, correct?

02:55:29PM

23 A. Correct. When they were driving,  
24 coming out of the sleeper berth. That's what a  
25 team does.

1 Q. I understand that's what you believe a  
2 team does, but you have absolutely no idea if  
3 that was, in fact, being done by Mr. Kehler and  
4 Mr. Marks with this tractor, do you?

02:55:39PM

5 A. Well, they just so happened to be  
6 coming out of the sleeper berth and going into  
7 the driving at the same time day after day when  
8 they completed inspections. I do know that.

9 Q. Look at these two real quick.

02:57:00PM

10 October 30 -- maybe that's my problem.

11 If Kehler's starting his shift and his  
12 pretrip inspection is identified as two minutes,  
13 but Marks' post-trip inspection is identified as  
14 13 minutes, would that be, in your opinion, an  
15 appropriate pretrip inspection for Mr. Kehler?

02:57:50PM

16 A. Pretrip inspection or just an  
17 inspection --

18 Q. Pretrip inspection.

19 A. -- during trip inspection?

02:57:59PM

20 Q. Pretrip inspection.

21 A. Depends on which one's doing the  
22 pretrip and post-trip. Post-trip inspection he  
23 might cut that short knowing the other driver's  
24 inspecting the vehicle at the same time.

02:58:13PM

25 Q. So one driver can rely upon the other

1 driver's inspection as part of his inspection  
2 for the upcoming leg?

3 A. It's done on his log. It's  
4 probably -- probably can't do that on a log, but  
02:58:30PM 5 that's how a team works.

6 Q. Is that proper under the regulations?

7 A. Probably not, but, keep in mind, we've  
8 got four inspections per day by these drivers  
9 and only -- there would typically be one pretrip  
02:58:49PM 10 and one post-trip.

11 Q. But a driver has to perform his own  
12 pretrip inspection on a vehicle and confirm to  
13 himself that the vehicle is in proper working  
14 order to begin the leg, correct?

02:59:01PM 15 A. Technically, yes.

16 Q. Under the regulations?

17 A. Under the regulations. And the  
18 regulations are talking about individual  
19 drivers. They don't address team situations  
02:59:10PM 20 that much.

21 Q. Why would it change?

22 A. Because you've got two drivers and  
23 four eyes on the same truck at the same time  
24 instead of one driver. They're both looking at  
02:59:23PM 25 tires at the same time. They're both looking at

1 the instruments. They're both looking at the  
2 trucks and trailers and the dollies at the same  
3 time.

4 Q. Well, they should be, right? And it's  
02:59:32PM 5 not necessarily the same time, right?

6 So, first, they should be looking at  
7 those things, right?

8 MR. KAPP: Object to the form.

9 THE WITNESS: Right.

02:59:37PM 10 BY MR. LIEBERMAN:

11 Q. And, secondly, they're not necessarily  
12 doing that at the same time, correct?

13 A. They are in many of these cases.  
14 Sometimes they're not. I've only highlighted  
02:59:49PM 15 those in orange where they're doing those  
16 inspections at the same time.

17 Q. Can one driver start a leg without  
18 doing a pretrip inspection because the other  
19 driver did a 35-minute post-trip inspection?

03:00:01PM 20 A. No. I think where things are getting  
21 kind of wrapped up here is you're thinking a  
22 solo driver doing a pretrip inspection running  
23 pretrip and post-trip from a running team. And  
24 these drivers are doing in-trip inspections all  
03:00:15PM 25 day as they go. The truck's moving. It's not

1 parked. It's an in-trip inspection. The trip  
2 is starting from East Coast to West Coast or  
3 vice versa and the macro's only a pretrip macro.

4 The point I'm trying to make is that  
03:00:36PM 5 you don't have one driver only looking at  
6 something for two minutes possibly. You've got  
7 two drivers looking at the same vehicles, the  
8 same tires, the same equipment at the same time,  
9 in many of these cases.

03:00:47PM 10 Q. And I guess my question is what does  
11 that matter if the regulations require a driver  
12 to perform a pretrip inspection?

13 MR. KAPP: Object to the form.

14 BY MR. LIEBERMAN:

03:00:55PM 15 Q. Where in the regulations can a driver  
16 rely on the inspection of another?

17 MR. KAPP: Same objections.

18 THE WITNESS: Because these drivers  
19 are running team.

03:01:03PM 20 BY MR. LIEBERMAN:

21 Q. I understand what you're saying.

22 I'm asking where in the regulations  
23 does it allow -- or the manuals, whatever you  
24 have in front of you.

03:01:10PM 25 Can you point me to any authority that

1 says one driver can rely upon the inspection of  
2 another?

3 MR. KAPP: Same objection.

4 THE WITNESS: I can't. I can't.

03:01:19PM

5 That's just how it works.

6 BY MR. LIEBERMAN:

7 Q. Based on your experience?

8 A. Based on my experience and based how  
9 teams run.

03:01:32PM

10 MR. LIEBERMAN: Can we go off record  
11 for a second.

12 (Recessed from 3:01 p.m. to 3:08 p.m.)

13 BY MR. LIEBERMAN:

14 Q. Sir, let's go back to your report that  
15 I marked. It's Exhibit 232. Let's go to page  
16 14 of your report, please.

03:09:20PM

17 As you testified earlier, you did not  
18 reconstruct this accident, correct?

19 A. Correct.

03:09:49PM

20 Q. You are not an expert in accident  
21 reconstruction, correct?

22 A. That is correct.

23 Q. And you are not an expert in the  
24 vehicle dynamics, correct?

03:09:55PM

25 A. Correct.



1 Q. My questions are along those lines.  
2 In the second sentence of italicized  
3 Section 4 -- and I'm going to do this in parts.

4 It says, "When Kehler's left front  
03:10:09PM 5 steer tire failed at highway speeds pulling the  
6 tractor suddenly to the left."

7 Did I read that correctly?

8 A. Yes, you did.

9 Q. Do you have an opinion that the left  
03:10:18PM 10 front steer tire failure at highway speed pulled  
11 the tractor suddenly to the left?

12 A. Only based on what I've read and as we  
13 discussed earlier.

14 Q. That's what I'm going to get at here.

03:10:28PM 15 Are you opining on the movements of  
16 the tractor or the causes of the movements or  
17 are you deferring to other experts in this case?

18 A. I'm deferring to other experts and  
19 depositions of Mr. Kehler.

03:10:41PM 20 Q. I understand.

21 But you don't have your own opinion as  
22 to the dynamics of this crash, do you?

23 A. Correct, I don't.

24 Q. You then go on to say, "In all  
03:10:51PM 25 probability, the trailers, primarily the rear

1 trailer, would have whipped to the right and  
2 were either unstable or in the process of  
3 rolling over, compounding Kehler's ability to  
4 control his vehicle and stay on the roadway."

03:11:02PM

5 Did I read that correctly?

6 A. You did.

7 Q. Is that your independent opinion or  
8 are you deferring to others?

03:11:09PM

9 A. That is my independent opinion based  
10 on reviewing crashes over the last 25 years with  
11 Swift drivers and pulling doubles.

12 Q. Is it based upon any information in  
13 this case that you reviewed?

03:11:28PM

14 A. Basically some information by other  
15 experts in this case.

16 Q. Who?

17 A. I forget which one.

03:11:41PM

18 But my opinion here is just based on  
19 the fact that when a vehicle -- only on the fact  
20 when a vehicle moves quickly left pulling a set  
21 of doubles, you have a whipping motion of the  
22 last trailer that could cause that trailer to  
23 roll over.

03:11:53PM

24 Q. Can you define what quickly left means  
25 to you in this context?

1 A. Suddenly. Maybe the word "suddenly."

2 Q. Can you quantify the yaw angle for me?

3 A. No, I can't.

4 Q. Have you attempted to quantify the yaw  
03:12:08PM 5 angle in this case?

6 A. I have not.

7 MR. KAPP: He's not being offered as a  
8 reconstructionist and he's not -- he's told you  
9 that several times.

03:12:15PM 10 MR. LIEBERMAN: Well, it's in his  
11 report.

12 BY MR. LIEBERMAN:

13 Q. Are you withdrawing your opinion in  
14 the second part of paragraph 4 that we just read  
03:12:24PM 15 then?

16 MR. KAPP: I don't think those -- that  
17 wording and that observation requires an expert  
18 opinion.

19 THE WITNESS: What I'm saying is  
03:12:37PM 20 sudden moves, including turning, stopping, or  
21 swerving of the tractor pulling double trailers  
22 creates a whipping effect. I know that happens  
23 based on accidents I've reviewed. Sudden  
24 movement including whipping.

03:12:51PM 25 BY MR. LIEBERMAN:

1 Q. Do you know if sudden movement  
2 occurred in this case?

3 A. I don't know for sure.

03:12:56PM

4 Q. And you've never experienced a sudden  
5 movement in a tractor-trailer because you've  
6 never driven one, correct?

7 A. Right.

03:13:05PM

8 Q. Have you conducted any studies, tests,  
9 or exams, other than those investigations, to  
10 determine the vehicle dynamics of a  
11 tractor-trailer during sudden movements?

12 A. No, I haven't.

03:13:14PM

13 Q. With respect to these specific  
14 opinions regarding the movements of the  
15 tractors, are you going to defer to Dr. Ogden on  
16 that?

17 Do you know who Dr. Ogden is?

18 A. I do.

19 Q. Have you read his report?

03:13:21PM

20 A. I have read his report.

21 Q. Are you gonna refer to reconstruction  
22 and dynamics opinions of Dr. Ogden?

23 A. I don't think I'm gonna refer to  
24 anything that Dr. Ogden has.

03:13:30PM

25 Q. Why not?

1 A. Including dynamics.

2 MR. KAPP: Are you saying refer or  
3 defer?

4 MR. LIEBERMAN: Defer.

03:13:35PM

5 MR. KAPP: I thought you said refer.

6 MR. LIEBERMAN: If I said refer, I'm  
7 sorry.

8 THE WITNESS: I thought you said  
9 refer.

03:13:40PM

10 BY MR. LIEBERMAN:

11 Q. I'm talking defer.

12 Are you gonna defer to Dr. Ogden with  
13 respect to accident reconstruction and vehicle  
14 dynamics?

03:13:46PM

15 A. I would have to go through all the  
16 experts' reports again. I know what happens  
17 when a driver pulling a set of doubles moves  
18 quickly to the left, what happens to the  
19 trailer. That's my only comment and I can defer  
20 to whoever believes that same action happens.

03:14:01PM

21 Q. Your opinion that the tractor in this  
22 case moved quickly to the left is based upon  
23 Mr. Kehler's testimony?

24 A. No. Based on the -- based on the  
25 report by the police department, or the law

03:14:18PM

1 enforcement officers, where the truck moved left  
2 and crossed the median.

3 Q. I'm talking about a quick or sudden to  
4 the left, as you write.

03:14:31PM

5 Where did you get that information, a  
6 sudden move to the left?

03:14:42PM

7 A. Well, if the driver was operating  
8 approximately 75 miles per hour and there's an  
9 event and the truck starts moving left, that's  
10 enough for the trailers to start whipping.  
11 Doesn't take much for a second trailer on a set  
12 of doubles to start whipping.

03:14:54PM

13 Q. Can you quantify the movement to the  
14 left of this vehicle following the tire  
15 disablement?

16 A. Quantify?

17 Q. Yes, sir.

18 A. No. I can't quantify that. I'm not a  
19 reconstructionist.

03:15:01PM

20 Q. Have you studied the tire marks in  
21 this case?

22 A. I have not.

23 Q. Do you have any expertise in  
24 identifying tire marks?

03:15:06PM

25 A. Just generally, but I have not done

1 that in this case.

2 Q. Are you offering any opinions with  
3 respect to the tire marks in this case?

4 A. No.

03:15:11PM

5 Q. Are you offering any opinions with  
6 respect to the controllability of the vehicle in  
7 this case?

8 A. Not expert opinions, no.

03:15:24PM

9 Q. So you have no opinion as to whether  
10 or not this vehicle should have been  
11 controllable during the tire event?

12 A. Correct.

03:15:46PM

13 Q. Do you have any opinions regarding any  
14 steering inputs by Mr. Kehler at any point  
15 during the crash sequence?

16 A. No. Only what I read in his  
17 deposition.

18 Q. So you're just reciting what he  
19 repeated?

03:15:53PM

20 A. Correct.

21 Q. You have no independent opinion on  
22 whether or not he actually performed those  
23 steering inputs?

24 A. Correct.

03:15:58PM

25 Q. And you have no opinion as to whether

1 or not he should or should not have performed  
2 those steering inputs?

3 A. Correct.

4 Q. Do you have any opinion with respect  
03:16:04PM 5 to any braking inputs by Mr. Kehler during the  
6 accident sequence?

7 A. No. Only that I don't recall looking  
8 at the DDEC report, that I'm very familiar with  
9 as far as the system, that there was any hard  
03:16:17PM 10 braking event that occurred.

11 Q. I want to narrow that down if I can.  
12 Your opinion related to whether or not  
13 there was any hard braking in this case is based  
14 upon your review of the DDEC data, correct?

03:16:32PM 15 A. Correct.

16 Q. It's not based upon anything else?

17 A. Correct.

18 Q. We'll get back to that.

19 Are you going to have any opinion in  
03:16:40PM 20 any regard related to Dr. Ogden's theory about  
21 the steer knuckle failure?

22 A. No, sir.

23 Q. Have you analyzed that?

24 A. I have not.

03:16:48PM 25 Q. Do you have any opinion with respect



1 to whether or not this accident was preventable  
2 or nonpreventable?

3 A. No. I don't think I have enough  
4 information to make that determination.

03:16:59PM

5 Q. What more information would you need?

6 A. I think I would need more information  
7 with regard to the total investigation of the  
8 thing including accident reconstructionists and  
9 movements and those kind of things.

03:17:16PM

10 MR. KAPP: He's not being offered --  
11 strike that.

12 BY MR. LIEBERMAN:

13 Q. Let's talk about the DDEC reports.

14 You're familiar, you said, with DDEC  
15 reports?

03:17:28PM

16 A. Yes. I've been trained to extract and  
17 review DDEC reports.

18 Q. What type of training?

19 A. I went to Detroit Diesel to get  
20 trained.

03:17:38PM

21 Q. And in this case I think you've at  
22 least narrowed in on the hard brake report?

23 A. Correct. I reviewed the entire  
24 report, including hard to last hard brakes, over  
25 three last hard brakes. And none of those hard

03:17:48PM

1 brakes correlated or related to this particular  
2 crash.

3 Q. Do you have any knowledge as to how  
4 hard brake events are recorded within the ECM  
03:18:00PM 5 system?

6 A. I do.

7 Q. How? How are they recorded?

8 A. Any hard braking completed that --  
9 where the vehicle slows at a rate of 9 miles per  
03:18:08PM 10 hour per second.

11 Q. Okay. That's the trigger for the  
12 system to start recording a hard brake event, in  
13 your opinion?

14 A. That's correct. On a Detroit it is, 9  
03:18:17PM 15 miles per hour per second.

16 Q. Was that the same trigger in this case  
17 for this particular ECM?

18 A. Yes. The DDEC or the system in this  
19 particular truck had a DDEC IV, I believe.

03:18:31PM 20 DDEC IV and DDEC V is the same trigger.

21 Q. And I was going to ask you what model.  
22 Did you say you think it was a DDEC Model IV?

23 A. DDEC IV, I believe -- 4 or 5. Both 4  
24 and 5 have the same deceleration rate of 9 miles  
03:18:43PM 25 per hour per second.

1 Q. Can that be altered?

2 A. No, I don't believe so.

3 Q. What does the ECM measure to determine  
4 if the vehicle has slowed 9 miles per hour in a  
5 second?

03:18:57PM

6 A. When the brake is applied and the  
7 vehicle decelerates at a rate of 9 miles per  
8 hour per second through the transmission, I  
9 believe.

03:19:06PM

10 Q. Is it your opinion that you need  
11 service brake application to trigger a hard  
12 brake report?

13 A. Based on my training, I think you do  
14 need that.

03:19:15PM

15 Q. Do you have any information regarding  
16 the terms volatile and nonvolatile data?

17 A. I don't have that. I don't know that.

18 Q. What about an eloquent shutdown; does  
19 that mean anything to you?

03:19:27PM

20 A. Doesn't mean anything to me.

21 Q. Do you know how the data's actually  
22 stored within the ECM for a hard brake event?

23 A. I don't.

24 Q. Can the storage be interrupted by a  
25 power interruption?

03:19:38PM

1 A. It could be, I believe so.

2 Q. Are you aware of whether or not  
3 there's a power interruption in this case?

03:19:46PM

4 A. I believe there was a power  
5 interruption at the time of the crash.

6 Q. Are you aware there's also a fire  
7 following the time of the crash?

8 A. I believe there was, yes.

03:19:55PM

9 Q. Are you aware that part of the ECM was  
10 actually melted?

11 A. I do.

12 Q. Could that account for the missing  
13 hard brake report if one, in fact, was  
14 triggered?

03:20:02PM

15 A. It could account for one, yes.

16 Q. Anything else about the DDEC reports  
17 that you're relying upon for your opinions?

18 A. Not that I can think of.

03:20:15PM

19 Q. Did you review any of the CPC data --  
20 well, strike that.

21 Do you know what a CPC is?

22 A. I don't.

23 Q. Okay. So I'm assuming you didn't  
24 review any of the data?

03:20:22PM

25 A. Correct.

1 Q. Do you know what an MCM is?

2 A. I don't.

3 Q. Do you know what Meritor is?

4 A. I don't.

03:20:31PM

5 Q. Did you review any of the Garmin GPS  
6 data?

7 A. I did not.

8 Q. So you're not relying upon the Garmin  
9 data in this case for any of your opinions?

03:20:40PM

10 A. Correct.

11 Q. Are you aware the Garmin data shows  
12 that this vehicle was operated for periods of  
13 time in excess of 75 miles per hour?

14 MR. KAPP: Object to the form.

03:20:49PM

15 THE WITNESS: I don't remember even  
16 looking at that information, no.

17 BY MR. LIEBERMAN:

18 Q. Should drivers always obey the speed  
19 limits?

03:20:55PM

20 A. No. Drivers don't always obey the  
21 speed limits.

22 Q. Should they?

23 MR. KAPP: Form.

24 THE WITNESS: Oh, should they.

03:20:59PM

25 They should follow the rules of speed

1 limits, correct.

2 BY MR. LIEBERMAN:

3 Q. Are you aware that the top speed  
4 recorded in the DDEC reports for this particular  
5 tractor was 91 miles per hour?

03:21:07PM

6 A. I remember --

7 MR. KAPP: Form.

8 THE WITNESS: -- that. I don't know  
9 what it was set at, but I do remember that  
10 that -- there was a speed that reached as high  
11 as 91 miles per hour.

03:21:12PM

12 BY MR. LIEBERMAN:

13 Q. Are you gonna be offering any opinions  
14 about whether or not driver conduct -- or the  
15 drivers were conducting themselves improperly  
16 with respect to speed?

03:21:21PM

17 A. I don't believe so.

18 Q. Do you have any opinion as to whether  
19 the Garmin data is accurate or inaccurate?

03:21:48PM

20 A. I have no idea whether it's accurate  
21 or inaccurate.

22 Q. Do you have any opinion as to whether  
23 the DDEC report are accurate or inaccurate?

24 A. All I know is that there was -- out of  
25 the hard brakes that were shown on the DDEC

03:21:58PM

1 report, there was no hard brake involving this  
2 event.

3 Q. I understand that.

03:22:05PM

4 What I'm asking is do you have any  
5 opinion as to whether or not DDEC reports are  
6 accurate or inaccurate?

7 A. No.

8 Q. Do you believe them to be accurate?

03:22:15PM

9 A. I don't know whether they're accurate  
10 or inaccurate. All I know is what I remember  
11 reading on the report with regard to hard brake.

12 Q. I see you still have the report in  
13 front of you. Thank you. Let's turn to  
14 page 15.

03:22:58PM

15 Let me ask it this way to try to  
16 streamline this. Is anything in paragraph 5  
17 that's italicized an opinion of yours or are you  
18 just reciting information from others?

03:23:32PM

19 MR. KAPP: You mean is this an opinion  
20 that he plans to testify to?

21 BY MR. LIEBERMAN:

03:23:40PM

22 Q. There are multiple sentences in this  
23 italicized paragraph and I -- from what I've  
24 heard today, you are offering no opinions on  
25 accident reconstruction, vehicle dynamics,

1 handling, or the proper or improper response by  
2 Mr. Kehler to this tire event.

3 My understanding of paragraph 5 kind  
4 of overlaps with those topics. So I'm trying to  
03:23:55PM 5 understand, are you offering opinions in those  
6 areas or are you just reciting this information?

7 MR. KAPP: They're in his report.

8 THE WITNESS: No. I can tell you that  
9 I do know at a posted speed limit of 75 miles  
03:24:08PM 10 per hour, a vehicle will travel 100 feet per  
11 second. I do know that.

12 BY MR. LIEBERMAN:

13 Q. Okay. That's a math equation, right?

14 A. A math equation. And the attending  
03:24:17PM 15 driver about one and a half seconds to perceive  
16 and react to an emergency situation. I do know  
17 that.

18 And I know that based on CDL  
19 information, the books. That's general training  
03:24:28PM 20 for drivers. That's contained in the CDL  
21 manual.

22 Q. Can I stop you at that point --

23 A. Sure.

24 Q. -- before we go further in this  
03:24:34PM 25 paragraph? Thank you.



1 First of all, is it your opinion that  
2 it takes a driver 1.5 seconds to perceive and  
3 react to an emergency situation?

4 A. That is the -- that's the average  
03:24:47PM 5 reaction time for an attentive driver.

6 Q. What is that based upon?

7 A. Just the average based on speed in the  
8 CDL manuals.

9 Q. Is that referenced in the Utah manual?

03:25:00PM 10 A. Both Wyoming and the Utah CDL manual.

11 Q. It says 1.5 seconds in the Utah  
12 manual?

13 A. Yes.

14 Q. Can you tell me -- do you have it with  
03:25:08PM 15 you?

16 A. I don't.

17 Q. Do you remember what section, because  
18 it's not cited in your report?

19 A. It's under speed. Actually, I-Trans  
03:25:20PM 20 Utah CDL Manual 6.0 -- well, let's see.

21 Q. That's a different site.

22 A. That might be different.

23 Q. But what you're telling me is I can  
24 look under speed in the Utah CDL manual and find  
03:25:33PM 25 the date that the manual itself provides that an

1 attentive driver takes about 1.5 seconds to  
2 perceive and react to an emergency situation?

3 A. Correct. It's under -- I forget which  
4 section, Section 2 -- it might be 6 under speed.

03:25:51PM

5 Q. Any other basis or bases for that  
6 opinion?

7 A. Not in this case with regard to  
8 investigating the case or doing any  
9 reconstruction.

03:26:01PM

10 Q. Do you have any background in human  
11 factors?

12 A. No, I don't.

13 Q. Have you ever studied it?

14 A. No, I haven't.

03:26:06PM

15 Q. Have you ever studied  
16 perception-reaction time?

17 A. Only based on -- no. Only based on  
18 what generally is discussed with regard to speed  
19 in a driver's perception-reaction to an  
20 emergency situation.

03:26:19PM

21 Q. Where is this generally discussed?

22 A. It's in the CDL manual.

23 Q. Outside of this manual that you're  
24 referring me to, is it discussed anywhere else  
25 to your knowledge?

03:26:31PM

1 A. Not that I know of. It could be in  
2 the PTDI manual, but it would pretty much mirror  
3 what the CDL would have.

4 Q. Are you familiar with any  
03:26:40PM 5 authoritative literature or studies on the  
6 subject?

7 A. I'm not.

8 Q. Does Dewer & Olson ring a bell to you?

9 A. No, it doesn't.

03:26:44PM 10 Q. Have you ever read a book called Human  
11 Factors & Behavior?

12 A. I have not.

13 Q. Have you ever taken any courses in  
14 human factors?

03:26:53PM 15 A. I have not.

16 Q. You also state that Kehler's vehicle  
17 would have traveled about 170 feet after the  
18 blowout.

19 First of all, is the blowout an  
03:27:09PM 20 expected or unexpected event, in your opinion,  
21 if you have one?

22 A. An unexpected event?

23 Q. Is it an expected or unexpected event,  
24 in your opinion, if you have one?

03:27:20PM 25 A. In this case I don't know if I have

1 one, but a blowout -- based on those terms, I'm  
2 not quite sure.

3 Q. So you have no opinion in that regard?

03:27:34PM

4 A. No opinion. And with regard to the  
5 170 feet, that is a mathematical equation based  
6 on 1.5 seconds at 75 miles per hour based on  
7 feet per second.

03:27:51PM

8 Q. Going back a second step. You don't  
9 know if this was, in fact, a blowout, correct;  
10 you're just repeating that from someone else?

11 I can ask that question better, trust  
12 me.

13 A. Go ahead.

03:28:00PM

14 Q. Do you know the failure mode of the  
15 tire?

16 A. Only based on what the driver Kehler  
17 said it was, and that's why I've got explosion  
18 blowout.

03:28:11PM

19 Q. Do you know where that occurred on the  
20 road?

21 A. Specifically, no.

22 Q. So you have no idea how many feet, if  
23 your calculations are accurate, that Mr. Kehler  
24 had to react to that event, do you?

03:28:20PM

25 A. Not to that particular event, no.

1 Q. And you haven't studied anybody's  
2 accident reconstruction in this case, correct?

3 A. Correct.

4 Q. So it's possible that Mr. Kehler --  
03:28:33PM 5 going off your opinion of 1.5 seconds and going  
6 170 feet -- had another 100 or 200 or even 300  
7 feet, considering you don't know where the event  
8 occurred?

9 MR. KAPP: Object to the form. Assume  
03:28:45PM 10 facts not in evidence.

11 THE WITNESS: Correct. All I know is  
12 that based on the mathematical event, he would  
13 have traveled about 170 feet after the event  
14 occurred.

03:28:56PM 15 BY MR. LIEBERMAN:

16 Q. But you're not saying that he didn't  
17 have enough time or space in which to control  
18 the vehicle, correct?

19 MR. KAPP: Object to the form.

03:29:03PM 20 THE WITNESS: I'm not saying that  
21 right now, no.

22 BY MR. LIEBERMAN:

23 Q. Are you gonna say that in the future?

24 A. No.

03:29:11PM 25 Q. I stopped you there as you were going

1 through this trying to explain to me which of  
2 this is your opinion and which of this is just a  
3 factual summary. So keep going.

03:29:32PM

4 A. Again, we talked about the whipping of  
5 trailers, if and when the tractor jerked to the  
6 left. And then also talking about this left  
7 turn based on some skid marks I see in the  
8 photos -- but I didn't reconstruct the  
9 collision -- if those are related to this  
10 particular crash at 75 miles per hour, that  
11 could cause the back trailer to whip, in my  
12 opinion.

03:29:51PM

13 Q. If that happened, right?

14 A. If that happened.

03:30:01PM

15 Q. Right. And you don't know if that  
16 happened in this case?

17 A. Correct.

18 Q. Keep going.

03:30:17PM

19 A. We've already discussed the evidence  
20 of hard braking and I saw no evidence in the ECM  
21 report.

22 Q. In the middle of the section you talk  
23 about including damaged front axle mechanical  
24 parts.

03:30:32PM

25 There's a sentence that says, "A

1 combination of factors and events presented  
2 Kehler from controlling his vehicles from  
3 leaving the roadway including damaged front axle  
4 mechanical parts, the tire and/or the rim  
03:30:42PM 5 dragging on the roadway and the trailers  
6 whipping back and forth while in the process of  
7 rolling over."

8 Are you offering those opinions?

9 A. If the tractor -- if the tractor lost  
03:30:54PM 10 the tire and there was enough damage for the  
11 left front axle parts to hit the ground, that  
12 would have taken the tractor hard to the left  
13 causing the whipping of trailers.

14 Q. Did that happen in this case?

03:31:09PM 15 A. Does it happen in this case?

16 Q. Did that happen in this case?

17 A. I believe it did.

18 Q. Based on what?

19 A. Based on the tractor moving quickly to  
03:31:21PM 20 the left.

21 Q. We're not communicating.

22 You have an opinion that a  
23 combination -- because I just asked you before,  
24 are you gonna be offering any opinions about  
03:31:30PM 25 whether or not Kehler was able to control this

1 tractor. You told me no.

2 And in this section it appears that  
3 you are offering opinions as to whether or not  
4 Mr. Kehler was able to control this tractor.

03:31:40PM

5 So, first, are you going to offer any  
6 opinions as to whether or not this was a  
7 controllable event?

8 A. I don't believe I can do that.

03:31:50PM

9 Q. Okay. So all this talk in your report  
10 about a combination of factors preventing Kehler  
11 from controlling his vehicle, these are not your  
12 opinions. You are going to be deferring to  
13 others for those, correct?

14 A. Correct, which I have in this report.

03:32:04PM

15 Q. That's a good point. That's what  
16 you're trying to convey to me, that fact that --  
17 are you just repeating what Dr. Ogden is opining  
18 in this case?

19 A. And Kehler in his deposition,  
20 information that he talked about.

03:32:16PM

21 Q. So if we're at trial and somebody asks  
22 you, Was Mr. Kehler able to control this vehicle  
23 at the time of the tire disablement, what is  
24 going to be your answer?

03:32:32PM

25 A. Based on his testimony, I would say he



1 was not able to.

2 Q. Do you have an expert opinion with  
3 respect to whether or not the vehicle was  
4 controllable?

03:32:41PM 5 A. I don't have an expert opinion, no.

6 Q. Do you have an expert opinion as to  
7 whether any front axle mechanical parts were  
8 damaged at any point in the accident sequence?

9 A. Not that I've investigated. I  
03:32:57PM 10 wouldn't have that opinion.

11 Q. In the first sentence, jumping up, it  
12 says, "The truck fender was torn off."

13 Do you know what tore off that truck  
14 fender?

03:33:08PM 15 A. It was heavily damaged is what I  
16 remember reading from maybe Kehler's report.

17 Q. Do you know if there was a tread  
18 separation going on during this event?

19 A. I don't know for certain, no.

03:33:21PM 20 Q. If there was a tread separation, is it  
21 fair to say you don't know if this was an  
22 inboard or outboard tread sep?

23 A. I would not know that.

24 Q. We also talked before, I asked if you  
03:33:36PM 25 were going to be giving any opinions as to the

1 proper response to a tire disablement at highway  
2 speeds and you said no. But this paragraph goes  
3 on to explain that "Kehler followed general  
4 front tire blowout safety guidelines other than  
5 speeding up when his tire blew out."

03:33:48PM

6 I've got to ask you again. Are you  
7 offering opinions as to whether or not  
8 Mr. Kehler properly responded to the tire  
9 disablement event?

03:33:58PM

10 A. I would have to add that I could opine  
11 to that.

12 Q. You can?

13 A. I can.

14 Q. Okay. What is your opinion?

03:34:04PM

15 A. My opinion is that he responded except  
16 for any evidence that he sped up as others have  
17 mentioned. And even if he sped up, I would not  
18 have been able to -- I would not be able to  
19 opine that anything differently would have  
20 happened if he hit the accelerator.

03:34:19PM

21 Q. Because you don't have the experience  
22 or training and background to actually make that  
23 opinion, correct?

24 MR. KAPP: Object to the form.

03:34:26PM

25 THE WITNESS: Correct.

1 BY MR. LIEBERMAN:

2 Q. You're not a vehicle dynamicist,  
3 correct?

4 A. Correct.

03:34:30PM

5 Q. You know the manuals recommend  
6 accelerating in the event of a front tire  
7 disablement, correct?

8 MR. KAPP: Same objection.

9 THE WITNESS: That's correct.

03:34:37PM

10 BY MR. LIEBERMAN:

11 Q. In fact, it's in the documents that  
12 you attached to your report, right?

13 A. Correct.

14 Q. And so your opinion is simply  
15 Mr. Kehler followed most of the recommendations  
16 but for speeding up at the time of the  
17 disablement, correct?

03:34:43PM

18 A. That would be correct.

19 Q. And your experience and expertise does  
20 not allow you to go any further to say what  
21 would have happened had he actually accelerated  
22 as the manuals recommend?

03:34:53PM

23 A. That's correct.

24 Q. Okay. Do you have any opinion  
25 regarding Mr. Kehler's practice of setting the

03:35:09PM

1 speedometer just above the speed limit?

2 A. Setting the speedometer?

3 Q. I'm sorry. Setting the cruise control  
4 just above the speed limit.

03:35:24PM

5 A. As I recall, I don't believe the  
6 cruise control was on.

7 Q. I'm not saying at the time of the  
8 crash. I'm just saying during the life of the  
9 truck.

03:35:33PM

10 A. Yes, yes. I remember reading some  
11 deposition information about setting the cruise  
12 control a couple miles above the speed limit.

13 Q. Do you have any opinion with respect  
14 to that practice?

03:35:42PM

15 A. Well, generally when you set the  
16 cruise on on a truck, the truck kind of varies  
17 with regard to the actual reliability of the  
18 speedometer. And he may know his trucks where  
19 if he sets it two miles above, it will hang  
20 around the speed limit. I don't know why he  
21 sets it a couple miles above except for drivers  
22 can do that.

03:36:00PM

23 Q. I'm just asking if you have an opinion  
24 with respect to a driver setting the cruise  
25 control at a couple miles per hour above the

03:36:13PM

1 posted speed limit?

2 MR. KAPP: Object to form. He just  
3 addressed it.

4 THE WITNESS: The only opinion I would  
03:36:20PM 5 have, if he knows his truck and sets it a couple  
6 miles above the speed limit, if he knows a  
7 couple miles above the speed limit is the speed  
8 limit, then that's what he would do.

9 BY MR. LIEBERMAN:

03:36:29PM 10 Q. What if he knows he's setting it above  
11 the speed limit and the truck is, in fact, going  
12 above the speed limit?

13 MR. KAPP: Object to the form.

14 THE WITNESS: Well, he shouldn't be  
03:36:36PM 15 going above the speed limit.

16 MR. LIEBERMAN: At this point, what  
17 I'll do is pass the witness to Mr. Fitzgerald  
18 and I'll review my notes.

19

03:37:14PM 20

21

22

23

24

25

## EXAMINATION

1  
2  
3 BY MR. FITZGERALD:

4 Q. Here's Exhibit 233. And I just want  
5 to make sure I'm clear.

03:37:35PM

6 Those are all your testimonies,  
7 deposition and trial altogether, since 2002?

8 A. Correct.

9 Q. Do you have any idea which were  
10 deposition and which were trial testimony?

03:37:46PM

11 A. Want me to mark this, if I can  
12 remember or how do you want to do that?

13 Q. Just tell me which ones were which.

14 A. I think the Crockford v. USA Plates  
15 was a trial.

03:38:17PM

16 Bruce Menk in Colorado, I believe was  
17 a trial. Cervantes v. C.R. England.

18 Jamar Coleman v. Las Vegas Paving was  
19 a trial.

03:39:00PM

20 I think that's it.

21 Q. All right. Has any court ever limited  
22 your testimony in any way?

23 A. No, sir.

24 Q. I want to turn to the comparison you  
25 did -- it's a loose term "comparison," but when

03:39:21PM

1 we were going through Kehler and Marks' logs and  
2 you were working out when they may have been  
3 jointly or successively conducting inspections.

4 So can you pull that exhibit out of  
03:39:39PM 5 that stack there, please. I want to go November  
6 7 for Mr. Kehler.

7 A. The day of November 7?

8 Q. Yes.

9 MR. FITZGERALD: For easy reference  
03:39:59PM 10 for lawyers, it's Exhibit 42 in this case.

11 THE WITNESS: I'm there.

12 BY MR. FITZGERALD:

13 Q. And I'm going to use that just as an  
14 example, because we'll be here for hours more if  
03:40:30PM 15 I go through every one of them.

16 So if we look on that particular page,  
17 it's dated November 7, 2014, it's for Brian  
18 Kehler. And it starts off at zero hundred hours  
19 and the first entry is 44 minutes where he's off  
03:40:52PM 20 duty 5.3 miles northwest of Fairmont -- or,  
21 excuse me, Falmouth, New York.

22 Are we on the same page?

23 A. Yes.

24 Q. In your review, were you counting all  
03:41:05PM 25 the inspections including the trailers and the

1 tractor or just the tractor?

2 A. I was including all the inspections.

3 Q. So a lot of those where there is an  
4 overlap, for lack of a better term, could well  
5 include things that were limited just to  
6 tractor -- I mean, trailer inspections?

03:41:21PM

7 A. That is possible. There are tractor  
8 numbers, obviously as we've seen, as well as  
9 trailer numbers. That could just be limited to  
10 trailer inspections.

03:41:37PM

11 Q. There are only two -- on this page,  
12 for example, there are only two inspections  
13 completed for the tractor, correct?

14 A. Where the tractor's included in the  
15 inspection, that's correct.

03:42:00PM

16 Q. Okay. And there's one more reference  
17 where it says inspections skipped.

18 And that refers to the tractor and  
19 three trailers, correct?

20 A. That's correct.

03:42:09PM

21 Q. And the rest of them refer to the  
22 trailers. Am I right?

23 A. That is correct.

24 Q. Okay. Now, just so we can think about  
25 other pages here, if we look at, for example, I

03:42:21PM



1 believe it's 2:15 a.m. -- actually 2:16 a.m., it  
2 says inspection completed 807998.

3 Do you see that one?

4 A. I do.

03:42:40PM

5 Q. And then it shows a minute later  
6 inspection completed of 825388, correct?

7 A. Correct.

8 Q. Both of those are trailer numbers,  
9 right?

03:42:54PM

10 A. They are.

11 Q. Then at 2:20 it says, hook PTI,  
12 correct?

13 A. Let me just maybe stop there. It may  
14 also be a converter gear dolly.

03:43:10PM

15 Q. Could be a dolly, could be a trailer,  
16 but --

17 A. Right.

18 Q. At most there's one dolly involved in  
19 this whole trip, right?

03:43:20PM

20 A. Yes. There's only one dolly involved.  
21 On this end, there would only be one dolly  
22 involved. I don't know how they number their  
23 equipment, but it could have involved a dolly.  
24 That's a piece of equipment.

03:43:32PM

25 Q. The gist I took from your earlier

1 testimony was that because there's a macro,  
2 there may be instances where the driver might  
3 not think to hit that macro button and so it  
4 misrecords how much time he actually spent.

03:43:50PM

5 Is that the gist of what you were  
6 saying earlier?

7 A. That's correct. Let me just go back  
8 before that question.

03:43:59PM

9 If you look at 2:17, a minute after  
10 those two inspections, you've got a hook PTI.

11 Q. Right.

03:44:10PM

12 A. In order to hook to those two  
13 trailers, you have to have the tractor involved.  
14 You can't just hook two trailers together. The  
15 tractor has to be involved in the first trailer  
16 to get the dolly on and so there's a tractor  
17 involved in that sequence.

03:44:25PM

18 Q. And what I'm trying to understand is  
19 since we have an event at 2:16, 2:17, 2:20, and  
20 2:21, does that mean that the truck driver may  
21 have missed pushing the macro four different  
22 times?

03:44:40PM

23 A. No. In that sequence -- and if you go  
24 back on some of the others, what happens is they  
25 have to keep track of the equipment that the

1 driver's assigned.

2 And I believe in this particular  
3 situation when they're out there doing their  
4 inspections, getting their trailers, getting  
03:44:53PM 5 their dolly, everything hooked up, they will get  
6 the equipment hooked up. They'll inspect it,  
7 make sure the tires are up, make sure the  
8 equipment, the air lines are working. Then  
9 they'll go back into the truck.

03:45:04PM 10 And then they'll enter the equipment  
11 numbers that they've hooked up to because that's  
12 how the system reads the equipment from that  
13 location to the other location or during the  
14 trip.

03:45:16PM 15 Q. All right. So what I'm trying to  
16 figure out here is since the first line in this  
17 series, using the example you just gave, was at  
18 2:16 and the last one in this series, which says  
19 inspections completed, was 2:21.

03:45:39PM 20 Can we fairly understand that at most  
21 the hook and the PTI took three minutes?

22 A. Based on when the driver hit the  
23 macro, that's what you would understand, but  
24 what -- and I've said this before. What a  
03:46:01PM 25 driver will typically do instead of out there on

1 the truck or out of the truck inspecting a piece  
2 of equipment, climbing back in the truck and  
3 hitting inspection on this trailer, going back  
4 out and inspecting the other trailer, they'll do  
5 all of the equipment at the same time.

03:46:14PM

6 Q. Have you read Mr. Kehler's deposition?

7 A. I have.

8 Q. And toward the end of the deposition  
9 he was questioned about these inspections,

03:46:22PM

10 correct?

11 A. I believe so.

12 Q. And essentially it was brought out  
13 that all of these inspections were pretty darn  
14 short, a minute, two minutes, et cetera, right?

03:46:34PM

15 A. Yes. He was -- and he was agreeing  
16 with the questioner about the time on the  
17 report.

18 Q. And he never suggested, well, it's  
19 that way because I just saved them all up until  
20 I got back in the tractor and then pushed the  
21 macro one, two, three or four times?

03:46:45PM

22 A. That is correct.

23 Q. Do you have any reason to believe  
24 that, if requested, he would have offered that  
25 explanation?

03:46:59PM

1 MR. KAPP: Object to the form.

2 THE WITNESS: I don't know what he  
3 would have said. I'm kind of going based on my  
4 experience of how drivers work e-logs, the  
03:47:10PM 5 computer system from the truck, and doing the  
6 work. I don't know how he would answer.

7 I could be totally wrong on this, but  
8 I'm saying this is based on my experience of how  
9 drivers will typically do the inspections.

03:47:22PM 10 BY MR. FITZGERALD:

11 Q. Well, have you suggested to Counsel  
12 that Mr. Kehler be interrogated about that so  
13 you know whether you're right or wrong?

14 MR. KAPP: Don't answer that. We're  
03:47:36PM 15 not gonna talk about any part of you developing  
16 opinions and communicating with counsel.

17 BY MR. FITZGERALD:

18 Q. Would you like to know what he would  
19 have to say about that?

03:47:45PM 20 MR. KAPP: Object to the form.

21 THE WITNESS: Oh, I think so.

22 BY MR. FITZGERALD:

23 Q. Because if he doesn't say that I saved  
24 it all up and then pushed a bunch of macros,  
03:47:55PM 25 he's stuck with some pretty darn short

1 inspections; isn't that true?

2 MR. KAPP: Object to the form.

3 THE WITNESS: Yes, he would be. But,  
4 again, going back, there's no way you can even  
5 do a fast inspection in a minute and get back up  
6 in the tractor and hit the macro.

7 BY MR. FITZGERALD:

8 Q. Well, I just want to make sure we're  
9 clear on this. On this event that took place  
10 from 2:16 to 2:21, which is five minutes, I just  
11 want to make sure I'm clear.

12 Are you offering an opinion that more  
13 likely than not he spent more time than that  
14 five minutes?

15 A. I don't know. I don't know what the  
16 correct time that he spent was. I can tell you  
17 what drivers do. You've got five minutes there  
18 and -- I don't know, he may have spent five  
19 minutes.

20 Q. And he should have spent more on a  
21 pretrip inspection; isn't that true?

22 A. He could have, yes.

23 Q. Well, he not only could have, but he  
24 should have, right?

25 MR. KAPP: Object to the form.

1 THE WITNESS: If that's all he spent  
2 doing three trailers, his converter gear, and  
3 tractor or dolly on the tractor.

4 BY MR. FITZGERALD:

03:49:14PM

5 Q. Because the whole idea behind these  
6 regulations is to try to make the highway safer;  
7 isn't that true?

8 A. That's the whole idea, yes, the  
9 general idea with regard to hours of service.

03:49:26PM

10 Q. And I think it's clear that you don't  
11 know one way or the other as to whether FedEx  
12 would look at this and say, huh, pretty short  
13 inspection. We'd better get looking into that.  
14 You don't even know if they did that, right?

03:49:43PM

15 A. Correct.

16 Q. But they should have, shouldn't they?

17 MR. KAPP: Object to the form.

18 THE WITNESS: Well, they audit logs  
19 and ensure the drivers are completing logs. I  
20 don't know if they would have audited their logs  
21 on a particular day or they would have audited a  
22 percentage of logs.

03:49:52PM

23 FedEx or CLR, as far as that goes,  
24 aren't supposed to audit logs every day.

03:50:05PM

25 They're just supposed to maintain compliance

1 with the regulations -- their compliance with  
2 the regulations.

3 BY MR. FITZGERALD:

4 Q. And you yourself, certainly for safety  
03:50:13PM 5 on the highways, want people conducting  
6 appropriately long pretrip inspections, right?

7 MR. KAPP: Form.

8 THE WITNESS: They need to log the  
9 inspections as they do them.

03:50:24PM 10 BY MR. FITZGERALD:

11 Q. Not only log them. You want them  
12 actually doing the inspections, right?

13 A. Well, certainly.

14 MR. KAPP: Same.

03:50:30PM 15 BY MR. FITZGERALD:

16 Q. All right. Page 10 of your report at  
17 the bottom, if you want to grab that.

18 The very last sentence begins on 10

19 and it goes over to 11 and it says, "The

03:51:11PM 20 agreement allowed FedEx to have exclusive

21 possession, use and control over equipment under

22 Part 376:12(c) or other applicable regulations

23 including the placement of FedEx USDOT and other

24 identification numbers on contractors trucks,"

03:51:27PM 25 correct?



1 A. Correct.

2 Q. That's your opinion?

3 A. It is.

4 Q. It also says in the second paragraph,  
03:51:43PM 5 second sentence, I believe, "CLR agreed for  
6 their drivers to have a favorable appearance  
7 that included wearing FedEx clothing and/or  
8 apparel purchased by CLR."

9 Is that your opinion?

03:51:54PM 10 A. Yes, it is. That's standard.

11 Q. And they wear -- these gentlemen were  
12 wearing FedEx clothing at the time of the wreck,  
13 right?

14 A. You know, I don't know if they were or  
03:52:03PM 15 not. I recall reading where they -- the company  
16 had purchased clothing for them, which is  
17 typical with a motor carrier with leased  
18 vehicles, but I don't recall if they had --  
19 maybe had a shirt on or something. I don't  
03:52:19PM 20 remember that.

21 Q. Do you have any idea why the highway  
22 patrol would have identified them in their  
23 official report as FedEx drivers?

24 MR. KAPP: Object to the form.

03:52:31PM 25 THE WITNESS: They may have had their

1 clothes on, may have had a shirt on or pants or  
2 something.

3 BY MR. FITZGERALD:

03:52:38PM

4 Q. Nothing on that truck said this is  
5 operated by CLR; isn't that true?

6 A. That's true. The trucks aren't  
7 required to have that. Just the DOT number of  
8 the primary carrier.

03:52:49PM

9 Q. So an ordinary citizen or even a  
10 highway patrolman looking at the truck would  
11 make a reasonable assumption that it's a FedEx  
12 operation?

13 MR. KAPP: Object to the form.

03:53:02PM

14 THE WITNESS: That is correct. And  
15 that's what most carriers do. They try to make  
16 their appearance seamless with contractors,  
17 although they -- the person's a contractor, owns  
18 his own truck. They try to make it seamless for  
19 the customer.

03:53:14PM

20 BY MR. FITZGERALD:

21 Q. You don't have any problem with a  
22 regulatory scheme that puts the burden on FedEx  
23 to try to improve safety on the highways, do  
24 you?

03:53:21PM

25 MR. KAPP: Form.

1 THE WITNESS: No, sir.

2 BY MR. FITZGERALD:

3 Q. Okay. At the bottom of page 11 it  
4 says, "CLR and its drivers were also required to  
03:53:30PM 5 follow FedEx drug and alcohol policies and  
6 procedures and meet other safety and security  
7 obligations."

8 Is that your opinion?

9 A. That is. And that's based on the fact  
03:53:41PM 10 that when they were qualified -- or, actually,  
11 before they were qualified, they were sent down  
12 to have a -- their drug and alcohol testing done  
13 preemployment to make sure that happened.

14 Q. Let's talk about the preemployment for  
03:53:58PM 15 a while here. We've got Mr. Marks, let's focus  
16 on him.

17 He gets a job with FedEx, right? You  
18 know. That he got the job.

19 MR. KAPP: Object to the form. Quit  
03:54:08PM 20 calling it FedEx. He was employed by CLR.  
21 Let's use the proper term.

22 THE WITNESS: He didn't get a job with  
23 FedEx. He was working for CLR trucking company  
24 or transportation. FedEx leased his tractor  
03:54:22PM 25 on -- they qualified him as CLR's driver.

1 BY MR. FITZGERALD:

2 Q. Did you read in his deposition where  
3 he said he had an opportunity to go with FedEx  
4 and he went to the Saint George hub?

03:54:34PM

5 A. Sure, yes.

6 Q. Okay. So he was looking for a job  
7 with FedEx; isn't that true?

8 MR. KAPP: Object to the form.

03:54:42PM

9 THE WITNESS: I don't know what job he  
10 was looking for. There are contractors out in  
11 that hub as well. And typically they'll say,  
12 I'm looking for a job with Swift Transportation  
13 when they want to drive a contractor's vehicle  
14 too. I mean, so they kind of don't understand,  
15 particularly drivers, the nuance of how that  
16 works.

03:54:56PM

17 BY MR. FITZGERALD:

18 Q. And certainly, likewise, you wouldn't  
19 expect our clients, for example, to know that  
20 nuance would you?

03:55:07PM

21 MR. KAPP: Object to the form.

22 THE WITNESS: Well, unless they're  
23 instructed or something on what the nuance is.

24 BY MR. FITZGERALD:

03:55:14PM

25 Q. Right. Basically the idea here is if

1 FedEx is gonna be vetting people for employment  
2 and putting them out on the road, FedEx is  
3 taking responsibility for that, aren't they?

4 MR. KAPP: Object to the form.

03:55:27PM

5 THE WITNESS: The responsibility of  
6 the person that's driving the truck is CLR and  
7 they do vet the drivers just like any other  
8 motor carrier in the nation that has contract  
9 drivers, they've got them as well.

03:55:40PM

10 BY MR. FITZGERALD:

11 Q. Have you got Marks' driver  
12 qualification form there in your materials?

13 A. I don't.

14 Q. It's on your thumb drive?

03:55:53PM

15 A. Right.

16 Q. Okay. So he has to -- there's a FedEx  
17 form. The driver qualification form is a FedEx  
18 form, right?

03:56:03PM

19 A. It's a FedEx form and I believe it's  
20 titled contractor re employment or contractor  
21 employment. And they have to do that -- we did  
22 it to make sure that when an applicant is  
23 completing the application for Swift as an  
24 employee, they fill out one application.

03:56:17PM

25 Contractor drivers fill out another

1 form. It's a FedEx form, but it's a contractor  
2 application form.

3 Q. Now, he goes to -- he winds up having  
4 a driver qualification form in the FedEx files  
03:56:37PM 5 at the Salt Lake hub; isn't that true?

6 MR. KAPP: Form.

7 THE WITNESS: Yeah. The form is  
8 FedEx's titled contractor driver. That's the  
9 forms they use to vet contractors.

03:56:52PM 10 BY MR. FITZGERALD:

11 Q. And one of the things they want to  
12 know is does a driver like Mr. Marks, who they  
13 were gonna put in this big rig and put out on  
14 the highway, had any experience hauling double  
03:57:05PM 15 trailers, right?

16 A. It would ask them if they haul double  
17 trailers, yes.

18 Q. Right.

19 Did you find anywhere in his driver  
03:57:14PM 20 qualification form that he had any experience  
21 pulling double trailers before he was put in  
22 this FedEx truck to drive down the highway?

23 MR. KAPP: Object to the form,  
24 relevance.

03:57:23PM 25 THE WITNESS: I don't know. He would

1 have to have his double CDL endorsement and  
2 that's probably why he's the second team member  
3 on the truck, but I don't specifically recall  
4 that.

03:57:36PM

5 BY MR. FITZGERALD:

6 Q. Would you be surprised to learn that  
7 he had revealed at least no experience driving  
8 double trailers -- pulling double trailers as  
9 reflected in his driver qualification form?

03:57:48PM

10 MR. KAPP: Object to the form.

11 THE WITNESS: No. I wouldn't be  
12 surprised about that. I think that's why his  
13 road test was a couple hours long when he came  
14 on board or something.

03:57:57PM

15 BY MR. FITZGERALD:

16 Q. And if he didn't have that kind of  
17 experience, he has to take a FedEx training  
18 course before he can pull doubles; isn't that  
19 true?

03:58:03PM

20 MR. KAPP: Object to the form.

21 THE WITNESS: I don't know anything  
22 about a FedEx training course. He has to have a  
23 doubles endorsement and I think he has to go  
24 through some testing with a road tester, which  
25 he did for I think a couple hours he mentioned.

03:58:19PM

1 BY MR. FITZGERALD:

2 Q. Well, let's make sure we're clear  
3 here. On page 11 of your report it says,  
4 "Before pulling FedEx trailers" -- you might  
03:58:33PM 5 want to turn to it so you can read it.

6 A. What page?

7 Q. Page 11.

8 Before pulling FedEx trailers,  
9 contractor drivers were required to be  
03:58:43PM 10 experienced and have the required skills and  
11 knowledge necessary to operate a long haul  
12 combination vehicle, correct?

13 A. Correct.

14 Q. And the contractor -- on your page 11  
03:59:17PM 15 do you have a reference to contractor driver  
16 requirements by FedEx including minimum one year  
17 CMV driving similar equipment or completion of  
18 FedEx training course to pull double trailers.

19 Is that in your report somewhere, page  
03:59:35PM 20 11 or elsewhere?

21 A. First of all, which page are you  
22 referring to?

23 Q. I'm asking you. Tell me if you said  
24 that somewhere in your report.

03:59:46PM 25 A. I don't believe so. The one-year



1 experience issue may be with other companies or  
2 even FedEx before they're allowed to drive with  
3 the contractor. That may have been. And that  
4 could have been in the contract appendix 10.

04:00:11PM

5 Q. Well, let me ask you this. If you  
6 look -- you see those bullet points there on  
7 page 11?

8 A. Yes.

04:00:20PM

9 Q. And let's go back and read the  
10 sentence before that. It says, "Contractor  
11 drivers were screened according to FedEx  
12 guidelines that were above the minimum standards  
13 set by the FMCSRs and the State of Wyoming.  
14 Contractor driver requirements by FedEx

04:00:33PM

15 included: Minimum 1 year CMV driving similar  
16 equipment."

17 Now, his driver qualification file  
18 does not show one year CMV driving similar  
19 equipment, unless you want to count a belly dump  
20 or other kind of trucks, not double trailers, as  
21 similar equipment.

04:00:53PM

22 MR. KAPP: Object to --

23 BY MR. FITZGERALD:

24 Q. My question is: Are non-double  
25 trailers experience acceptable to meet this

04:01:01PM

1 FedEx requirement?

2 MR. KAPP: Object to the form.

3 THE WITNESS: Well, I would have to  
4 look at Appendix A again, but I think there's  
04:01:15PM 5 two parts to this. They have to have at least  
6 one year commercial driving experience, similar  
7 equipment tractor-trailer rigs.

8 I think at some point in time FedEx  
9 had a training course to pull double trailers,  
04:01:28PM 10 but before he is able to pull double trailers,  
11 he has to go down and get a -- be tested to pull  
12 LCVs. That's where you get your doubles  
13 endorsement from. That's from the State.

14 BY MR. FITZGERALD:

04:01:42PM 15 Q. So are you saying that he did have one  
16 year at least CMV driving experience driving  
17 similar equipment to this tractor with two  
18 double trailers on it?

19 MR. KAPP: Object to the form. It  
04:01:54PM 20 misstates --

21 THE WITNESS: I don't know that.

22 BY MR. FITZGERALD:

23 Q. You don't know that?

24 A. No. I don't think he did. He had  
04:01:58PM 25 similar experience pulling trailers, commercial

1 semitrailers.

2 Q. Do you have any evidence that he  
3 completed a FedEx training course to pull double  
4 trailers, as you've said here? I'm not saying  
04:02:11PM 5 you said he did it. I'm just saying this is one  
6 thing FedEx requires, completion of a FedEx  
7 training course.

8 Is there any evidence that you're  
9 aware of that he did indeed complete the FedEx  
04:02:21PM 10 training course to pull double trailers?

11 MR. KAPP: Object to the form.

12 THE WITNESS: No. I don't believe  
13 they had that course at the time he started  
14 driving for CLR. That was in their agreement or  
04:02:39PM 15 their contract.

16 BY MR. FITZGERALD:

17 Q. I just want to make sure when you're  
18 at trial testifying that FedEx exceeds even the  
19 minimum standards set by the FMCSRs in the State  
04:02:51PM 20 of Wyoming, you will not be testifying that he  
21 met this particular requirement, quote, Minimum  
22 one year CMV driving similar equipment or  
23 completion of a FedEx training course to pull  
24 double trailers.

04:03:03PM 25 MR. KAPP: You've mis -- I object to

1 the form of the question and you're misstating  
2 the criteria.

3 THE WITNESS: He had one year -- at  
4 least one year or more years driving a similar  
04:03:13PM 5 equipment with regard to semitrailers. He had  
6 that experience.

7 Then they say -- or FedEx in their  
8 rules at some point in time said FedEx training  
9 course. They had a FedEx training course for  
04:03:25PM 10 persons to pull double trailers. And I believe  
11 that course was discontinued.

12 BY MR. FITZGERALD:

13 Q. So is it your opinion that having no  
14 experience driving double trailers suffices for  
04:03:38PM 15 the minimum of one year CMV driving similar  
16 equipment?

17 MR. KAPP: Object to the form.

18 THE WITNESS: Yes. And he had to have  
19 his doubles endorsement. He had to be tested  
04:03:47PM 20 for that.

21 BY MR. FITZGERALD:

22 Q. But that doesn't take a year, right?

23 A. No, that's correct. It doesn't.

24 Q. Okay.

04:03:52PM 25 A. No. He had a year similar experience

1 pulling semitrailers.

2 Q. But they weren't doubles, right?

3 A. It wasn't doubles, but one trailer's a  
4 semitrailer. Then he has to go down and get his  
04:04:04PM 5 CDL endorsement from the State.

6 Q. Well --

7 A. I don't know if he went through a  
8 two-hour course or something.

9 Q. Let me make sure I'm clear on this.

04:04:12PM 10 You earlier talked about, well, double  
11 trailers are different because that second  
12 trailer is gonna swing out to the right if  
13 you're in a yaw.

14 Wouldn't it be important if FedEx was  
04:04:23PM 15 gonna put somebody out on the road with a double  
16 trailer, that to do that he have at least a  
17 year's experience driving a double trailer  
18 before they do it?

19 MR. KAPP: Object to the form.

04:04:31PM 20 THE WITNESS: I don't think so. FedEx  
21 is set up with a first-seat driver and  
22 second-seat driver. Kehler was the first-seat  
23 driver and Mr. Marks would have been the  
24 second-seat driver. In other words, Kehler was  
04:04:46PM 25 watching Marks.

1 BY MR. FITZGERALD:

2 Q. So he can get his one-year experience  
3 as a more or less trainee at FedEx, right?

4 A. Correct.

04:04:52PM

5 MR. KAPP: Object to the form.

6 THE WITNESS: In other words, he's not  
7 a new driver out of school is what they're  
8 trying to say. These guys have to be  
9 experienced.

04:05:03PM

10 BY MR. FITZGERALD:

11 Q. But he is driving on US highways with  
12 other vehicles on them containing United States  
13 citizens and he doesn't have a year's experience  
14 yet; isn't that true?

04:05:13PM

15 MR. KAPP: Object to the form,  
16 misstates the evidence.

17 THE WITNESS: That's not true. He had  
18 about 15 years' experience pulling semitrailers.

19 BY MR. FITZGERALD:

04:05:21PM

20 Q. Okay. Let me be more clear.

21 He did not have a year's experience  
22 pulling double trailers before FedEx put him in  
23 this truck and let him haul, right?

24 A. That's correct.

04:05:34PM

25 MR. KAPP: Form.

1 THE WITNESS: That's correct. That's  
2 why he had to get his --

3 MR. KAPP: Just --

4 BY MR. FITZGERALD:

04:05:41PM

5 Q. That's why he had to what?

6 A. That's why he had to get his doubles  
7 endorsement from the State.

8 Q. But that doesn't make up for a lack of  
9 one year's worth of experience before he's out  
10 there driving, right?

04:05:52PM

11 MR. KAPP: Object to the form,  
12 argumentative. And you've been arguing with him  
13 now for about 10 minutes.

14 THE WITNESS: I don't know.

04:06:00PM

15 MR. FITZGERALD: I'll probably keep  
16 doing it.

17 MR. KAPP: I bet you will. I know.

18 BY MR. FITZGERALD:

19 Q. So you said you don't know?

04:06:05PM

20 A. What was the question again?

21 MR. FITZGERALD: Please read back what  
22 the witness said in response to my last question  
23 before the objection by Mr. Kapp.

24 (The record was read by the reporter  
25 as follows:

04:06:39PM

1 "But that doesn't make up  
2 for a lack of one year's  
3 worth of experience before  
4 he's out there driving, right?"

04:06:40PM 5 Answer: "I don't know."

6 BY MR. FITZGERALD:

7 Q. That's what I wanted to have read  
8 back. Your answer was "I don't know," correct?

9 MR. KAPP: Object to the form.

04:06:45PM 10 THE WITNESS: It's no. And, again,  
11 we're talking about a year's commercial  
12 vehicle -- commercial motor vehicle driving  
13 similar equipment, semitrailers, or completion  
14 of a FedEx training course to pull doubles.

04:07:03PM 15 I don't believe, before they  
16 discontinued the training course, that they  
17 pulled doubles for a year hauling freight. It's  
18 a doubles course to teach them how to hook up  
19 doubles.

04:07:15PM 20 BY MR. FITZGERALD:

21 Q. Which he didn't have, right?

22 A. He didn't have that.

23 Q. Why did FedEx quit having that course?

04:07:23PM 24 MR. KAPP: Object to the form, calls  
25 for speculation.



1 THE WITNESS: I don't know. I don't  
2 know.

3 BY MR. FITZGERALD:

04:07:28PM

4 Q. Well, would you, as an expert in this  
5 field, say they should have had a course for a  
6 guy who had no experience driving double  
7 trailers?

8 MR. KAPP: Object to the form.

04:07:35PM

9 THE WITNESS: Not when he had about 15  
10 years pulling semitrailers, no.

11 BY MR. FITZGERALD:

12 Q. Okay. And that's true even though  
13 they handle differently and can be dangerous on  
14 the highway, right?

04:07:42PM

15 MR. KAPP: Same objection.

16 THE WITNESS: That's correct.

17 MR. FITZGERALD: Let's mark this as  
18 the next exhibit.

04:07:48PM

19 (Deposition Exhibit No. 254 marked for  
20 identification.)

21 BY MR. FITZGERALD:

04:08:16PM

22 Q. I'm gonna hand you what's been marked  
23 for identification as Exhibit 254. I will  
24 represent that it is Bates stamped C&G-FXG-150.  
25 And it names a registrant FedEx Ground Package

1 System, Inc., Indiana Registration Cab Card, and  
2 it's valid for the period of 26 March 2014 to 28  
3 February 2015. So those are military dates.  
4 It's certainly valid during the time of the  
04:08:36PM 5 deaths in this case. I'll ask you to take a  
6 look at that, please.

7 Have you ever seen a cab card like  
8 that before?

9 A. This specific cab card --

04:08:51PM 10 Q. A cab card like that before?

11 A. Oh, yes.

12 Q. What are they for?

13 A. They are a registration card, based on  
14 that same plate number to be able to travel  
04:09:01PM 15 within, for example, the state of Indiana.

16 Q. Do you recognize that as the cab card  
17 for the tractor in this case?

18 A. I do.

19 Q. And what does it say in this  
04:09:24PM 20 paragraph, which I need to point to you. You've  
21 got my only copy.

22 In the middle of the page, it says,  
23 "Motor carrier responsible for safety."

24 Right? Did I read that right?

04:09:38PM 25 A. You did.

1 Q. Who does it say is the motor carrier  
2 responsible for safety?

3 A. It would be FedEx Ground Package  
4 System, Inc.

04:09:44PM

5 Q. Okay. Thank you.

6 You also attached to your report a  
7 document called SMS, which is Safety Measurement  
8 System, FedEx Ground Package System, Inc.

04:10:01PM

9 Do you want to turn to your report,  
10 please, and go to that page. It should be  
11 page 29 of 46. And it shows some numbers there,  
12 correct?

13 A. Correct.

04:10:25PM

14 Q. And can you make out that the number  
15 of vehicles on this form under FedEx Ground  
16 Package System, Inc., doing business as FedEx  
17 Ground is 45,552?

04:10:47PM

18 A. That's what it says, yes. Let me just  
19 turn to the previous page here. It's a bad  
20 copy. Maybe 46,662.

21 Q. Okay. And how many drivers does it  
22 show under the heading of FedEx Ground Package  
23 System, Inc., d/b/a FedEx Ground?

24 MR. KAPP: Object to the form.

04:11:05PM

25 THE WITNESS: 72,122.

1 BY MR. FITZGERALD:

2 Q. Did I read that correctly? Mr. Kapp  
3 objected to the form of my question.

4 Did I read the document correctly?

04:11:17PM

5 A. Yes. It says drivers, 72,122.

6 Q. Okay. Now, when these -- let me put  
7 it this way. It sounds like you're

8 extrapolating from data from the SAFER web or  
9 Safer system that FedEx had a relatively good

04:11:42PM

10 safety record. Am I right?

11 A. That's correct. Looking at it, that's  
12 correct.

13 Q. And you're basing that, if I heard you  
14 right, in large part on what happens if they get  
15 pulled over and the vehicle is inspected, a spot  
16 inspection, right?

04:11:54PM

17 A. Correct. It's called roadside  
18 inspections, yes.

19 Q. So wouldn't it be heavily dependent  
20 upon whether the law enforcement decides to pull  
21 over a FedEx truck as opposed to Joe Schmo's  
22 moving van?

04:12:04PM

23 MR. KAPP: Form.

24 THE WITNESS: It's totally dependent  
25 on that because they would inspect the vehicle

04:12:17PM

1 and/or driver and they would go off the number  
2 on the door.

3 BY MR. FITZGERALD:

4 Q. Right.

04:12:27PM

5 A. And that's where the report -- if any  
6 report's made, will go.

7 Q. And they decide who to pull over,  
8 right?

9 MR. KAPP: Object to the form.

04:12:36PM

10 THE WITNESS: Yes. Sometimes it could  
11 be random, but, yes. Yes, they do.

12 BY MR. FITZGERALD:

13 Q. Yeah. So if they don't pull over  
14 enough FedEx trucks, we don't really have a  
15 scientific sample here, do we?

04:12:48PM

16 MR. KAPP: Object to the form.

17 THE WITNESS: I don't know whether  
18 it's a scientific sample or not, but when you've  
19 got FedEx with 72,000 drivers and all those  
20 trucks, you tend to get pulled over more than  
21 Joe Blow's trailer.

04:13:04PM

22 BY MR. FITZGERALD:

23 Q. How frequently do you see a FedEx  
24 truck pulled over on the side of the highway?

04:13:14PM

25 MR. KAPP: Object to the form.

1 THE WITNESS: I --

2 BY MR. FITZGERALD:

3 Q. You never have, have you?

4 A. I don't think I have. I haven't  
04:13:19PM 5 really looked either.

6 Q. So you can't tell us what the error  
7 rate is in this document that you rely on to say  
8 they have a relatively good safety record, can  
9 you?

04:13:32PM 10 MR. KAPP: Object to the form.

11 THE WITNESS: Well --

12 BY MR. FITZGERALD:

13 Q. Error rate is a term of art among  
14 lawyers nowadays.

04:13:38PM 15 Just for your edification, there is a  
16 challenge to experts' testimony that isn't based  
17 on anything scientific. And I think you've  
18 already agreed it's kind up to the highway  
19 patrol to decide who to pull over.

04:13:53PM 20 So I'm asking you, is there a  
21 scientific error rate to this information that  
22 you're using to derive your opinion that they're  
23 a relatively safe company?

24 MR. KAPP: Object to the form.

04:14:02PM 25 THE WITNESS: Well, I can tell you

1 that I don't know what the scientific rate is,  
2 but every truck has to go through weigh  
3 stations. We know that.

4 BY MR. FITZGERALD:

04:14:09PM

5 Q. And they don't inspect them at weigh  
6 stations, do they?

7 A. Certainly they do.

04:14:17PM

8 Q. They go out with a tire gauge and put  
9 it on there and see how much inflation's in that  
10 truck --

11 A. No. Actually --

12 Q. -- on the tire?

04:14:22PM

13 A. No. Actually, when they do their  
14 inspection at the roadside inspections, they  
15 don't gauge that air in the tire until the  
16 tire's 50 percent of the air rate.

04:14:37PM

17 What I'm getting at here is that of  
18 all the trucks that go through those inspection  
19 stations, which is roadside inspections, the  
20 out-of-service rate for vehicles is 12.8 versus  
21 20.7 nationwide. Driver error rate is 1.6 out  
22 of 5.5 nationwide, and HAZMAT is 3.8 out of 4.5.  
23 Now, that may be skewed a little bit depending  
24 on if they're hauling hazardous materials or  
04:14:52PM 25 not.

1 But when I'm referring to  
2 out-of-service rates and their situation  
3 compared to the national average, they're above  
4 the national average because all these trucks  
5 have to go through these weigh stations.

04:15:05PM

6 Q. You're saying that the weigh stations  
7 look at their logs and determine whether they've  
8 broken the 70-hour rule? Is that what you're  
9 saying?

04:15:14PM

10 A. Sure. Weigh stations -- when they go  
11 through a weigh station, they have inspection  
12 bays. They may pull them over for logs. They  
13 might do complete Level 1 inspection on trucks.  
14 It's up to them.

04:15:28PM

15 Q. And how do you know precisely what  
16 they do in a weigh station? How do you know?

17 A. How do I know?

18 Q. Yes.

19 A. Because I've been to weigh stations.

04:15:38PM

20 Q. As a trucker?

21 A. Not as a trucker.

22 Q. Have you hung around and seen what  
23 they do when they pull people over?

24 A. I have. I have in the past. In fact,  
25 I used to go down to the weigh stations and wait

04:15:47PM



1 for our drivers to come through and inspect  
2 their vehicles myself.

3 Q. Why did you need to do that if the  
4 weigh stations are doing the inspections?

04:16:00PM

5 A. They may not have inspected my  
6 vehicle.

7 Q. Right.

8 A. I would inspect all vehicles.

04:16:04PM

9 Q. Right. They may not have inspected  
10 all the FedEx vehicles that went through their  
11 weigh station; isn't that true?

12 A. Correct.

13 MR. KAPP: Object to the form.

04:16:10PM

14 THE WITNESS: They're not gonna  
15 inspect every FedEx vehicle. They're not gonna  
16 inspect another vehicle that is above the  
17 national average.

18 BY MR. FITZGERALD:

04:16:19PM

19 Q. Will you agree that the information in  
20 here is not a scientific sample?

21 MR. KAPP: Object to the form.

04:16:36PM

22 THE WITNESS: I can't define what a  
23 scientific whatever you said was. All I can  
24 tell you is that all trucks go through these  
25 stations and trucks are inspected.

1 BY MR. FITZGERALD:

2 Q. Some trucks are inspected?

3 A. Some trucks are inspected.

4 MR. KAPP: Off the record.

04:16:46PM

5 (An off-the-record discussion ensued.)

6 BY MR. FITZGERALD:

7 Q. Did CLR have a USDOT number at the  
8 time of this wreck?

04:17:43PM

9 A. I made a search and I don't believe  
10 they were registered with the DOT at the time of  
11 the crash. Although they're a motor carrier, I  
12 don't believe they're registered. I found no  
13 registration number.

04:17:58PM

14 Q. Wouldn't you expect, if FedEx was  
15 concerned about who it was putting out on the  
16 highways, that they would at least check to see  
17 if CLR was a registered motor carrier?

18 MR. KAPP: Object to the form.

04:18:10PM

19 THE WITNESS: No, sir. Many  
20 operator -- owner-operators aren't registered  
21 with the DOT because they intend to lease their  
22 tractor on with another company.

23 BY MR. FITZGERALD:

04:18:19PM

24 Q. An owner-operator is a specific  
25 individual; isn't that true?

1 A. It's a specific individual with a  
2 specific truck. This was a specific individual  
3 with two trucks, similar to an owner-operator.  
4 Now, if you had a large fleet, they would  
5 generally be registered.

04:18:31PM

6 Q. So whether they pick an appropriate  
7 contractor depends upon -- whether the  
8 contractor they pick actually has a DOT  
9 registration depends upon whether FedEx picks a  
10 big company or little company, is that what  
11 you're saying?

04:18:54PM

12 MR. KAPP: Object to form.

13 THE WITNESS: No, Not at all.

14 BY MR. FITZGERALD:

15 Q. Please illuminate me on what you're  
16 saying.

04:18:58PM

17 A. I will. What I meant is that if a  
18 contractor with two trucks, five trucks, or one  
19 truck goes into a company, wants to lease their  
20 tractor on with that company, such as FedEx, the  
21 company does one of two things. FedEx will do  
22 one of two things.

04:19:10PM

23 They'll inspect the truck at the time,  
24 and they'll qualify their driver or any of the  
25 drivers that are gonna be driving those trucks.

04:19:20PM

1 The registration doesn't -- it doesn't matter  
2 with the DOT, because generally they know  
3 they're not gonna register with the DOT. Their  
4 purpose is to lease their truck on with a motor  
04:19:36PM 5 carrier.

6 Q. So as far as the United States  
7 Transportation Department goes and the National  
8 Highway Traffic Safety Administration, they've  
9 only got one registered company to look at here  
04:19:46PM 10 and that's FedEx; isn't that true?

11 MR. KAPP: Object to the form.

12 THE WITNESS: Yes. There's only one  
13 registered company that I'm aware of.

14 BY MR. FITZGERALD:

04:19:54PM 15 Q. Okay.

16 MR. KAPP: Steve, are you gonna ask  
17 questions?

18 MR. KLINE: I'm down to maybe two now  
19 that Jim and Chad are done -- or maybe Jim's not  
04:20:15PM 20 done.

21 MR. KAPP: No, he's not done.

22 MR. LIEBERMAN: And I have just a  
23 couple more on the back end.

24 MR. KAPP: Oh, sweet Jesus.

04:20:31PM 25 MR. FITZGERALD: Well, I'm happy to

1 check my notes, but I'll need to come back and  
2 ask questions if I left any out, but I'm pretty  
3 darn close.

4 MR. KAPP: Go ahead.

04:20:40PM

5 MR. FITZGERALD: Well, then go ahead,  
6 Steve.

7

8 EXAMINATION

9

04:20:40PM

10 BY MR. KLINE:

11 Q. So, Mr Ritchie, this is Steve Kline,  
12 and I represent the Ednie plaintiffs in this  
13 case and I just have a couple of questions, I  
14 think, after having listened all day.

04:21:03PM

15 The first one goes back to something I  
16 thought you said this morning, and I have to say  
17 there are times when I'm not sure I got it  
18 exactly right.

19 But I thought you indicated this  
04:21:16PM 20 morning that some maintenance companies went to  
21 the FedEx lot at the Salt Lake City transfer  
22 station and actually picked up the CLR tractor  
23 for maintenance.

24 Did I get that right?

04:21:27PM

25 A. You did. And I recall information in

1 one of the depositions where either they dropped  
2 the truck off at one of their designated shops  
3 and they brought the truck back to the FedEx  
4 yard or they picked the truck up and then  
5 brought it back to the yard.

04:21:44PM

6 Q. Do you know how they would have ever  
7 accessed the FedEx transfer station?

8 A. You know, I don't. I don't. I know  
9 there's got to be a certain code, but if they're  
10 mechanics, they've got the truck number that's  
11 registered in their system, they may have let  
12 them in.

04:21:59PM

13 Q. Can you give me the name of any  
14 particular maintenance company that has a pass  
15 to the FedEx transfer station in Salt Lake City?

04:22:11PM

16 A. I cannot, no.

17 Q. And my only other question goes back  
18 to what Mr. Fitzgerald was just talking about a  
19 minute ago, and that's the FMCSR safety ratings.  
20 And I'm not sure that I understand what  
21 everybody -- where we've come to with respect to  
22 a couple answers on that.

04:22:29PM

23 First off, the statistics you're  
24 talking about, do they relate specifically to  
25 FedEx Ground or do they include all the other

04:22:45PM

1 FedEx entities?

2 A. They would relate to -- I'll tell you  
3 in a minute -- whoever the registered number is  
4 under, and that would be FedEx Ground Package  
04:23:11PM 5 Systems, Inc., under DOT No. --

6 Q. And did I get it right that you don't  
7 have any idea whether or not the independent  
8 contractors are included within that?

9 A. They would be included in that.

04:23:29PM 10 Q. And they would be included in that  
11 only if they operated under the FedEx DOT  
12 number. Am I right about that?

13 A. That's correct. In other words, when  
14 FedEx submits their MCS-150 report on an annual  
04:23:45PM 15 basis, they include all of the trucks that they  
16 own and operate as well as all of the contractor  
17 trucks that are delivering freight under their  
18 DOT number.

19 Q. Okay. So there -- you have the  
04:24:02PM 20 ability as an independent contractor to operate  
21 under your own DOT number. Am I right about  
22 that?

23 A. Oh, yes.

24 Q. Do you know the percentage of  
04:24:13PM 25 independent contractors that operate under their

1 own number versus those that operate under the  
2 FedEx number?

3 A. I don't. But here's the key to that.  
4 I think there would be a substantial number of  
04:24:27PM 5 those that did. And the reason I say that is  
6 because in order to operate as a motor carrier  
7 and haul cargo interstate, this is interstate,  
8 you have to have a registered registration  
9 number with the DOT.

04:24:46PM 10 So if they want to go out and haul  
11 their own loads, in other words, and pull their  
12 own trailer, they have to be registered with the  
13 DOT to do that. They have to be a for-hire  
14 motor carrier.

04:24:57PM 15 In this case, if they just purchased  
16 the trucks and they don't have a trailer and  
17 intend to only haul loads for FedEx, there would  
18 be no need to be registered.

19 Q. Okay. But if any company that's  
04:25:10PM 20 working for FedEx wants to haul for either  
21 themselves or some other company, they would  
22 operate under a different number than FedEx's  
23 probably; is that right?

24 A. That is correct. And they would have  
04:25:25PM 25 to pull FedEx's numbers off the door and put



1 their own numbers on the door.

2 Q. Okay. And if they had an accident  
3 hauling for FedEx under their own number, that  
4 would not be included in the statistics you've  
5 looked at; isn't that true?

04:25:38PM

6 A. If they haul for FedEx under the  
7 contractors number?

8 Q. Correct. And they have a wreck doing  
9 a load for FedEx, that infraction actually would  
10 not appear in the statistics you've looked at;  
11 isn't that right?

04:25:59PM

12 MR. KAPP: Object to the form.

13 THE WITNESS: Technically, yes, but  
14 they could not be hauling a FedEx load under  
15 their number. That would be a violation in and  
16 of itself.

04:26:09PM

17 BY MR. KLINE:

18 Q. Why is that?

19 A. Well, because they're leased to FedEx,  
20 number one, they're hauling FedEx loads and  
21 they're pulling FedEx trailers. And under the  
22 lease, they --

04:26:18PM

23 Q. You're not aware that the contract  
24 allows -- the contract that CLR signed allows  
25 them to haul for other companies?

04:26:35PM

1           A. Yes, it does. And that's my point.  
2     My point is they can leave FedEx separately.  
3     When they're hauling FedEx equipment and  
4     trailers, during that trip they can haul only  
5     solely for FedEx.

04:26:51PM

6           But sure. They can break away. If  
7     they have their own registration number, they  
8     can get their own trailer and they can haul  
9     FedEx loads until the cows come home, but  
10    they've got to take FedEx numbers off their door  
11    and they've got to put their numbers on the  
12    door. So you're correct there.

04:27:03PM

13          Q. Mr. Rodwick wanted to take advantage  
14    of the provision in the contract that says that  
15    he has the ability to haul for another entity.  
16    He would have to have his own DOT number and he  
17    would have to somehow alter the number on the  
18    door before making that run for another company?

04:27:20PM

19          MR. KAPP: Form.

20          THE WITNESS: Well, yes, that's  
21    basically correct, unless he leased his truck on  
22    with another carrier other than FedEx. But yes.  
23    If he had his own tractor, his own trailer and  
24    wanted to haul a load for X, Y, Z company, he'd  
25    have to be registered with the motor carrier --

04:27:41PM

04:28:00PM

1 with the FMCSA.

2 BY MR. KLINE:

3 Q. And this is my ignorance of the  
4 trucking industry, I guess, but what you're  
04:28:11PM 5 saying to me is anytime you haul a load for a  
6 particular entity, you have to have a separate  
7 DOT number when you haul a load for another  
8 entity?

9 MR. KAPP: Object to the form.

04:28:29PM 10 THE WITNESS: Correct. You'd have to  
11 have your own DOT number. And, again, this is  
12 to haul freight interstate, between states. If  
13 he's gonna haul a load intrastate, he doesn't  
14 need to be registered with the DOT, but he does  
04:28:45PM 15 need to be registered with that particular state  
16 DOT.

17 BY MR. KLINE:

18 Q. So if he's hauling intrastate, within  
19 states, and he has an accident, it's possible  
04:29:04PM 20 that that accident doesn't appear on FedEx's or  
21 anybody's DOT report?

22 A. No. That would be listed under that  
23 particular entity registered with the State, for  
24 example, State of California.

04:29:20PM 25 Q. Would that end up on the safety -- the

1 FMCSR safety ratings?

2 A. Under -- no, no. Not unless you're --  
3 not unless he's registered with the FMCSA. It  
4 would only register under the particular state  
04:29:43PM 5 that you're hauling that load intrastate with.

6 MR. KLINE: Okay. That's all the  
7 questions I have. Thank you.

8

9 EXAMINATION

10

11 BY MR. LIEBERMAN:

12 Q. Mr. Ritchie, I've got a couple quick  
13 hitters here.

14 Have you ever been retained by FedEx  
04:29:58PM 15 Ground in the past?

16 A. No, I have not.

17 Q. Prior to today's deposition, have you  
18 ever had any conversations with Dr. Ogden?

19 A. No.

04:30:05PM

20 Q. Mr. Woehrle?

21 A. No.

22 Q. Anyone from FedEx Ground?

23 A. No.

24 Q. Anyone from CLR?

04:30:13PM

25 A. No.

1 Q. Have you ever used a thumper on a  
2 steer tire of a tractor?

3 A. I have not.

4 Q. Would you know what sound to listen  
5 for?

04:30:21PM

6 A. I wouldn't personally, no.

7 Q. Do you know what a steering knuckle  
8 is?

9 A. I do.

04:30:30PM

10 Q. Do you know what a steering shaft  
11 spline is?

12 A. I believe I do.

13 Q. Do you know what, if anything, happens  
14 to the steering wheel if the steering knuckle is  
15 broken from the steering shaft spline?

04:30:42PM

16 A. If it's totally disabled or broken?

17 Q. Yeah.

18 A. There would be no steering. It would  
19 spin around, just like a U-joint.

04:30:53PM

20 Q. Do you know where the steering knuckle  
21 is located in the subject tractor-trailer?

22 A. It's below the -- obviously, the  
23 steering shaft into the engine compartment and  
24 then coupled with another shaft that goes into  
25 the gear box. Kind of like there's a U-joint,

04:31:07PM

1 the knuckle's the U-joint in between the --

2 Q. I call it a U-joint as well.

3 A. Okay. It's halfway from the steering  
4 wheel down to the actual steering box case.

04:31:23PM

5 Q. Are you familiar with Dr. Ogden's  
6 theory that a piece of tire tread broke that  
7 steering knuckle?

8 A. I believe I read that, yes.

04:31:33PM

9 Q. Do you have any opinion of your own in  
10 that regard?

11 A. I don't.

12 Q. Do you know if it's feasible?

13 MR. KAPP: Object to the form. He's  
14 not being offered to talk about the mode of --

04:31:40PM

15 THE WITNESS: I don't.

16 MR. KAPP: -- failure of the tire or  
17 disabling the truck.

18 THE WITNESS: I don't.

19 BY MR. LIEBERMAN:

04:31:47PM

20 Q. With that in mind, have we covered all  
21 your opinions and bases in this case?

22 A. You have.

23 MR. LIEBERMAN: I am done. And I  
24 thank you for your time, although Mr. Fitzgerald  
04:31:56PM 25 may have a couple follow-ups. So thank you,

1 sir.

2

3

EXAMINATION

4

04:31:58PM

5 BY MR. FITZGERALD:

6

7

8

Q. I'm gonna show you what was listed in  
your report as Exhibit 3 and it will receive a  
new number here. Okay.

9

A. Okay.

04:32:06PM

10 Q. And the reporter's gonna put that  
11 number on it now.

12

13

(Deposition Exhibit No. 255 marked for  
identification.)

14

BY MR. FITZGERALD:

04:32:42PM

15 Q. And the question is: Did you write  
16 Exhibit 3?

17

18

A. These are pages out of the PTI  
Professional Truck Driver manual.

19

04:33:04PM

20 Q. Do you consider these pages to be a  
reliable authority?

21

A. I do.

22

23

24

04:33:19PM

25 Q. And I have a curiosity about this  
gentleman on the page here who has been -- whose  
identity has been obscured. His face has been  
blacked out.

1 Who did that? Was that you or is that  
2 the way you got it?

3 A. Oh, no. That's not blacked out in my  
4 manual.

04:33:26PM

5 MR. KAPP: It's not blacked out --

6 THE WITNESS: What page is that?

7 MR. KAPP: It just doesn't copy well.  
8 I mean, you can come over here and look, but I  
9 could see why it might not copy well.

04:33:51PM

10 MR. FITZGERALD: That's okay. It's  
11 your airplane.

12 So we need you to leave that book with  
13 the reporter or send Mr. Kapp a copy, because we  
14 want that whole book.

04:34:06PM

15 THE WITNESS: Okay. I'm using this as  
16 I work case to case.

17 MR. FITZGERALD: Sure. You can work  
18 that out with Mr. Kapp.

19 MR. LIEBERMAN: Jim, do you want to  
20 mark it?

04:34:15PM

21 MR. FITZGERALD: Yeah.

22 (Deposition Exhibit No. 256 marked for  
23 identification.)

24 BY MR. FITZGERALD:

04:34:52PM

25 Q. I think you referred to the 2012 CDL



1 manual in your report. I'm going to quote  
2 something. "The only acceptable way to check  
3 the tire pressure is to use a tire pressure  
4 gauge."

04:35:08PM

5 If that's in that CDL manual, would  
6 you have expected someone driving through  
7 Wyoming to adhere to it?

8 MR. KAPP: Object to the form.

9 THE WITNESS: What was that question  
10 again?

04:35:19PM

11 BY MR. FITZGERALD:

12 Q. Yeah. The CDL manual for Wyoming,  
13 2012 version, says "The only acceptable way to  
14 check the tire pressure is to use a tire  
15 pressure gauge."

04:35:28PM

16 Now, these gentlemen were licensed  
17 under a Utah CDL, but my question is: If  
18 they're driving a semitruck with double trailers  
19 through Wyoming, do you expect them to adhere to  
20 this statement that the only acceptable way to  
21 check the tire pressure is to use a tire  
22 pressure gauge?

04:35:43PM

23 MR. KAPP: Object to the form.

24 THE WITNESS: I see what you mean.

04:35:52PM

25 It's fairly identical to the Utah CDL manual and

1 most of the other manuals in the country. So  
2 whatever that manual says is generally -- it's a  
3 guideline.

4 BY MR. FITZGERALD:

04:36:03PM

5 Q. Do you have any idea what Redbone  
6 checked the pressure to be when they -- as you  
7 have said several times -- shortly before this  
8 incident had the truck in and checked the  
9 inflation levels?

04:36:16PM

10 A. As I mentioned before, I was obviously  
11 not there. I don't know specifically what they  
12 would do. I would expect them and I think it  
13 would be reasonable for a driver to expect them  
14 to air the tires properly.

04:36:27PM

15 Q. And would airing the tires to 90 psi  
16 be proper with 110 on the placard?

17 MR. KAPP: Object to the form.

18 THE WITNESS: I don't know what they  
19 would air it up at. That's generally what they  
20 do on cold pressure at shops and locations is  
21 they air it up around 110.

04:36:38PM

22 BY MR. FITZGERALD:

23 Q. Well, my question is: Would it be  
24 acceptable to inflate them only to 90?

04:36:50PM

25 MR. KAPP: Object to the form.

1 THE WITNESS: I don't know. I don't  
2 believe so if it's in the shop cold.

3 BY MR. FITZGERALD:

04:37:05PM

4 Q. Okay. You mentioned earlier a safety  
5 manual that you said you reviewed just the other  
6 day and I'm very curious what safety manual you  
7 reviewed the other day.

8 A. I think I was talking about a FedEx  
9 manual for contractors.

04:37:27PM

10 Q. Okay. Where did you review it?

11 A. I believe it was sent to me from  
12 Mr. Kapp's office.

13 Q. Okay. Did your rely on it in reaching  
14 any of your opinions?

04:37:38PM

15 A. You know, there wasn't much to rely on  
16 except for it was a safety manual that went to  
17 contractors. The manual -- when I say it's a  
18 safety manual, I forget what it's called. It  
19 may have been an operational manual.

04:37:51PM

20 They talked about the safe operation  
21 of the trucks and a little bit about maintaining  
22 driver qualifications, but most of it had to do  
23 with FedEx shipping processes, identifying  
24 packages and those kinds of things.

04:38:07PM

25 MR. KAPP: I forget what it's called,

1 but I think it was the one that they sign off on  
2 every year.

3 BY MR. FITZGERALD:

4 Q. Well, is it in your materials here?

04:38:16PM

5 A. You've got it. It's in -- wherever my  
6 thumb drive is.

7 Q. Okay.

8 A. You should have that. It would be --  
9 if you've got -- you didn't download that, did

04:38:27PM

10 you?

11 Q. I did download your thumb drive but,  
12 as Mr. Lieberman said, we can't always count on  
13 a computer like this to get it downloaded  
14 precisely. So we'll work it out.

04:38:39PM

15 Your testimony is you've given it to  
16 us on the thumb drive?

17 A. Correct. It's under the FedEx  
18 documents.

19 Q. Okay.

04:38:44PM

20 A. That's where I put it.

21 Q. Where are these weigh stations that  
22 you've been to? Are they all in Arizona?

23 A. Most are in Arizona and California,  
24 primary that desert center of the border of  
04:38:57PM 25 California and Arizona.

1 Q. So you can't testify to what the weigh  
2 stations in Wyoming would do, right?

3 A. No. I haven't been to those weigh  
4 stations, that's correct.

04:39:08PM

5 Q. I have one last thing here and that  
6 is, you earlier testified you do not have to  
7 check the inflation with a gauge for every  
8 inspection.

04:39:16PM

9 The question I have is should you  
10 check it with a gauge before every pretrip  
11 inspection?

12 MR. KAPP: Object to the form. It's  
13 been asked and answered.

04:39:25PM

14 THE WITNESS: I believe that checking  
15 that with a gauge is up to the drivers -- up to  
16 the driver. I don't think you should every  
17 single pretrip inspection when you have a team  
18 doing two pretrip inspections a day.

19 BY MR. FITZGERALD:

04:39:36PM

20 Q. Okay. How about once a week; would  
21 you agree they should check the inflation with a  
22 tire gauge once a week?

23 MR. KAPP: Same objection.

04:39:45PM

24 THE WITNESS: I think they might be --  
25 I think they probably should check it even more

1 often than that.

2 BY MR. FITZGERALD:

3 Q. With a tire gauge?

4 A. With a tire gauge. It depends on the  
04:39:51PM 5 driver's visual inspection, physical inspection  
6 of the tire, but there's no set date, time, or  
7 week to be checking tires.

8 Q. Should they check it with a tire  
9 inflation gauge once a month at least no matter  
04:40:04PM 10 what the other factors are?

11 MR. KAPP: Object to the form.

12 THE WITNESS: I would think a driver  
13 would generally gauge a tire at least once a  
14 month.

04:40:12PM 15 BY MR. FITZGERALD:

16 Q. Would you say that that is what safety  
17 requires?

18 A. What safety requires?

19 Q. Yes.

04:40:22PM 20 A. It depends on where the truck is  
21 running, the truck operation, and when and where  
22 it just came out of the shop. Did it come out  
23 of a qualified shop two days ago or when. I  
24 think it's just up to the driver.

04:40:36PM 25 Q. Well, how about this particular run

1 for these particular drivers on behalf of FedEx  
2 from Salt Lake to Connecticut, if they're doing  
3 that regularly.

4 Sometime during each month that  
04:40:47PM 5 they're operating, should they check the tires  
6 with a tire inflation gauge?

7 MR. KAPP: Same objections.

8 THE WITNESS: It's up to the drivers,  
9 but I would think generally on each end of the  
04:40:56PM 10 leg they would do a pretrip inspection and gauge  
11 it.

12 BY MR. FITZGERALD:

13 Q. And when you say you think they would,  
14 is it your testimony that to promote safety they  
04:41:07PM 15 should?

16 MR. KAPP: Same objections.

17 THE WITNESS: Well, there's all kinds  
18 of issues about promoting safety. I'm saying  
19 they could and it wouldn't be a bad idea, but  
04:41:18PM 20 they're running team operations. Between the  
21 first part of the leg and the second part of the  
22 leg, they know what their truck's doing. They  
23 know when their truck came out of the shop. I  
24 don't think they need to gauge their tires every  
04:41:28PM 25 time they stop.

1 BY MR. FITZGERALD:

2 Q. Well, that's not my question. And so  
3 I want to be fair to you because we're probably  
4 going to see you in Casper, Wyoming in the  
5 trial.

04:41:36PM

6 Have you been informed of the trial  
7 date?

8 A. July sometime?

9 Q. Yes.

04:41:40PM

10 So if I were to say to you in front of  
11 the jury in Casper, Wyoming, I understand your  
12 opinion to be it is not necessary for these  
13 drivers to put a tire inflation gauge on the  
14 steer tires at least once a month, that that's  
15 your opinion, would that be true?

04:41:53PM

16 A. I wouldn't say it's not necessary, but  
17 I would not say it's not required.

18 Q. Would you say it should be done for  
19 safety?

04:42:04PM

20 A. I would say it could be done for  
21 safety.

22 Q. Well, I realize it could be. They  
23 could check it every day.

24 Should they check it at least once a  
25 month?

04:42:10PM



1           A. I don't know. It's up to the driver.  
2 It's up to the driver. I don't think it's not  
3 realistic for a driver not to do it once a  
4 month. I mean, it seems very reasonable to me.

04:42:25PM

5           Q. Would you say they should check it --  
6 should check it at least once every three  
7 months?

8           MR. KAPP: Object to the form.

9           THE WITNESS: Sure. I would agree  
10 with that.

04:42:36PM

11 BY MR. FITZGERALD:

12           Q. Every two months?

13           A. I believe so.

14           Q. Every six weeks?

04:42:44PM

15           A. It depends on when the truck goes in  
16 the shop. If they take the truck in the shop  
17 with the miles they particularly run, it's gonna  
18 be in for a B service. They take it in for a  
19 B service, the shop checks the tires typically  
20 in those situations.

04:42:56PM

21           Q. But we only have one record here of  
22 any number reflected in any maintenance record,  
23 and that's before these tires were put on, and  
24 the number is 90.

04:43:08PM

25           So how can they rely on the shop if

1 the shop they're going to is putting 90 psi in  
2 the tires?

3 MR. KAPP: Object to the form. Calls  
4 for the witness to speculate.

04:43:19PM

5 MR. FITZGERALD: Well, the witness has  
6 said it's perfectly okay to rely on the shop to  
7 do it. The only shop record we have shows  
8 underinflation.

9 BY MR. FITZGERALD:

04:43:28PM

10 Q. So I'm asking you is that perfectly  
11 okay?

12 MR. KAPP: Yeah, it's a Freightliner  
13 dealer.

04:43:33PM

14 THE WITNESS: I believe, in my  
15 opinion, when I saw that report they gauged the  
16 tire at 90 pounds.

17 BY MR. FITZGERALD:

18 Q. Right.

04:43:39PM

19 A. With the idea that they would air it  
20 up to whatever the reasonable or the recommended  
21 pressure would be.

22 Q. It doesn't say it was aired up in any  
23 record, does it?

04:43:46PM

24 A. No. It doesn't say it was aired up,  
25 but that would just be their responsibility to

1 do that.

2 Q. Are you aware that after the wreck  
3 when the surviving tire was checked, the  
4 inflation showed 94 psi?

04:43:57PM 5 A. I'm not aware of that.

6 Q. Would that be acceptable to you to  
7 have it running at 94 psi? Now, it's cold by  
8 then.

9 A. Sure.

04:44:04PM 10 MR. KAPP: Object to the form.

11 BY MR. FITZGERALD:

12 Q. 94 psi would be acceptable. Is that  
13 what you're saying?

14 A. It may be if the drivers are  
04:44:09PM 15 constantly trying to get their tires -- trying  
16 to get 110 psi.

17 Q. Wait a minute.

18 A. You're saying 90 or 94?

19 Q. 94. What it shows on the stick, on  
04:44:23PM 20 the gauge?

21 A. 94 is a little bit low.

22 Q. Yeah.

23 A. Between 100 and 105. But 94 is very  
24 low.

04:44:29PM 25 Q. It's not safe, is it?

1 MR. KAPP: Object to the form.

2 THE WITNESS: I don't know if it's  
3 safe or not.

4 BY MR. FITZGERALD:

04:44:33PM

5 Q. You don't know if it's safe or not?

6 A. No. 94 is -- doesn't mean the tire's  
7 not safe.

04:44:46PM

8 Q. Is it acceptable to you as a safety  
9 expert to have 94 psi in the right steer tire of  
10 this particular truck?

11 MR. KAPP: Object to the form.

04:44:57PM

12 THE WITNESS: I would say it's only  
13 acceptable to have that tire aired up to where  
14 it runs at 110 pounds. I would say that's not  
15 totally acceptable, but I don't know what the  
16 pressure was. I think it should be more than 94  
17 pounds.

18 MR. FITZGERALD: Okay. That's all I  
19 have. Thanks.

04:45:08PM

20 MR. LIEBERMAN: Steve, anything  
21 further?

22 MR. KLINE: I do. I want to follow up  
23 on that, if I might for a second.

24

25

## EXAMINATION

1  
2  
3 BY MR. KLINE:

4 Q. Mr. Ritchie, are you testifying  
04:45:18PM 5 despite the fact that the placard says it's  
6 supposed to be run at 110 pounds cold, that  
7 truckers prefer to run it at 110 pounds hot?

8 A. Correct.

9 Q. And for the last question that kind of  
04:45:38PM 10 dovetails into what Mr. Fitzgerald was asking  
11 you.

12 Do you have an opinion as to what psi  
13 cold you would put it at to get it to 110 psi  
14 hot?

04:45:50PM 15 A. It would be based on the load factor  
16 on the tire. Generally --

17 Q. Let's say at maximum load or whatever  
18 the load was in this case.

19 A. 80,000 pounds maximum load, if you've  
04:46:04PM 20 got --

21 Q. No. I'm not talking about 80,000  
22 pounds. I'm talking about 12,000 pounds.

23 A. Well, then you'd have to factor in the  
24 weight of the trailers, converter gear, and  
04:46:16PM 25 tractor. You might be at 65,000 pounds. Divide

1 that by 22 tires. It might be 28 to 3,000  
2 pounds per tire.

3 The regulations indicate that at -- in  
4 373.75, I forget the regulation, that at 41  
04:46:48PM 5 miles per hour to 50 miles per hour the  
6 weight -- the pressure can increase 10 to 15  
7 pounds.

8 And as I went through the history --

9 Q. Even at 50 miles an hour it wouldn't  
04:47:02PM 10 surprise you if Mr. Kehler and Mr. Marks decided  
11 to put the pressure at 95 psi?

12 MR. KAPP: Object to the form.

13 THE WITNESS: Well, no. I think  
14 that's low. I think he said 100 to 105 is what  
04:47:14PM 15 they usually ran it at. And based on that with  
16 the weights they were hauling with FedEx, that  
17 would put it right around 110 pounds.

18 And, as I mentioned before, that's  
19 consistent with the Bridgestone tire inflation  
04:47:32PM 20 inspection they did on multiple trucks where the  
21 drivers would typically run it at that 105  
22 pounds.

23 BY MR. KLINE:

24 Q. So it's fair to say that it doesn't  
04:47:45PM 25 surprise you that everybody ignored the placard?

1 MR. KAPP: Object to the form.

2 THE WITNESS: Well --

3 MR. KLINE: What's wrong with that  
4 form?

04:47:56PM

5 THE WITNESS: It's not ignoring the  
6 placard. It's what is --

7 BY MR. KLINE:

8 Q. How is it not ignoring the placard?  
9 Cold is not the same as hot, is it?

04:48:03PM

10 A. No, it's not. It's not. The drivers  
11 in the industry know that they should run those  
12 tires for maximum wear at 110 pounds. They also  
13 know the tires heat up when you run them on the  
14 road.

04:48:15PM

15 Q. But it's 110 cold, right?

16 A. That's what the placard says is cold.

17 What drivers know and understand is  
18 you run them at 110 pounds hot, and to run them  
19 at 110 pounds hot, if a pressure is at 100 to  
20 105 cold, it will run up to 110 pounds hot.

04:48:32PM

21 MR. KLINE: Well, we'll argue cold  
22 versus hot in July. I'm done.

23

24

25

## EXAMINATION

BY MR. FITZGERALD:

Q. I want to know what scientific studies you've ever run to determine what you just testified to as to where you can start.

Have you ever done any studies?

A. Scientific studies, no, I haven't. Only based on the regulations and based on studies that Bridgestone did with tires.

Q. How many times have you underinflated a tire below 110, in other words, and then run it for a while and seen what pressure it's gone up to?

A. I have not personally run a tire. I have not done that.

MR. FITZGERALD: That's all I've got.

MR. KAPP: We'll reserve. He'll read and sign.

(4:49 p.m.)



SIGNATURE PAGE

I, DENNIS RITCHIE, a deponent exercising my right to read and sign my deposition taken on March 9, 2016, place my signature hereon and make the following changes on \_\_\_\_\_, 2016.

DENNIS RITCHIE

(IF THERE ARE NO CHANGES, WRITE "NONE" BELOW)

PAGE	LINE	READS	CHANGE TO	REASON
10	_____	_____	_____	_____
11	_____	_____	_____	_____
12	_____	_____	_____	_____
13	_____	_____	_____	_____
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25	_____	_____	_____	_____

1 STATE OF ARIZONA )  
 ) ss.  
2 COUNTY OF MARICOPA )

3 BE IT KNOWN that the foregoing  
4 deposition was taken before me, Kim Bata, RMR, a  
5 Certified Reporter for the State of Arizona;  
6 that the witness before testifying was duly  
7 sworn by me to testify to the whole truth; that  
8 the questions propounded to the witness and the  
9 answers of the witness thereto were taken down  
10 by me in shorthand and thereafter reduced to  
11 typewriting under my direction; that the  
12 foregoing pages are a true and correct  
13 transcript of all proceedings had upon the  
14 taking of said deposition, all done to the best  
15 of my skill and ability.

16 I FURTHER CERTIFY that I am in no  
17 way related to any of the parties hereto nor am  
18 I in any way interested in the outcome hereof.

19 DATED at Phoenix, Arizona, this 21st  
20 day of March, 2016.

21 /s/ Kim Bata  
22 KIM Bata, RMR/CSR  
23 Certified Court Reporter  
Certificate No. 50233

DENNIS RITCHIE - 03/09/2016

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